

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 95

THE PEOPLE OF PUERTO RICO, PETITIONER,

vs.

RUSSELL & CO., SEN C.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT**

PETITION FOR CERTIORARI FILED MAY 20, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.**

OCTOBER TERM, 1939.

No. 3617.

RUSSELL & CO., S. en C.,
DEFENDANT, APPELLANT.

v.

THE PEOPLE OF PUERTO RICO,
PLAINTIFF, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO,
FROM JUDGMENT, MARCH 15, 1940.

TRANSCRIPT OF RECORD.

FRANCIS E. NEAGLE,
ROUNDS, DILLINGHAM, MEAD & NEAGLE,
WILLIAM CATTRON RIGBY,
for Appellant.
for Appellee.

BOSTON:
PRINTED UNDER DIRECTION OF THE CLERK.

1940

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**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.**

OCTOBER TERM, 1939.

No. 3617.

**RUSSELL & CO., S. EN C.,
DEFENDANT, APPELLANT,**

v.

**THE PEOPLE OF PUERTO RICO,
PLAINTIFF, APPELLEE.**

TRANSCRIPT OF RECORD.

[Filed in Circuit Court of Appeals August 6, 1890.]

[Filed in the Supreme Court February 8, 1937.]

**IN THE DISTRICT COURT FOR THE JUDICIAL DISTRICT OF
SAN JUAN, PUERTO RICO.**

Civil No. 12,619.

**THE PEOPLE OF PUERTO RICO, represented by MANUEL V.
DOMENECH, Treasurer of Puerto Rico, Plaintiff,**

v.

RUSSELL & Co., SUCRS., S. EN C., Defendant.

RECOVERY OF TAXES.

AMENDED COMPLAINT.

Now comes The People of Puerto Rico, represented by Manuel V. Domenech, in his capacity of Treasurer of Puerto Rico, by the undersigned attorneys, and amending the original complaint filed herein, as its cause of action against the defendant, states and alleges:

I. That The People of Puerto Rico is a sovereign political entity created by an Act of the Congress of the United States of America, approved March 2, 1917, generally known as the Organic Act of Puerto Rico; and that Manuel V. Domenech is the Treasurer of the Insular Government of Puerto Rico, duly appointed and in the discharge of that office according to law.

II. That the defendant Russell & Co., Sucrs., S. en C., is an agricultural civil partnership, organized as a juridical entity in conformity with the Civil Law of Puerto Rico, with power to sue and be sued. On information and belief, which the plaintiff considers true, the aforesaid partnership Russell & Co., Sucrs., S. en C., is composed of the following persons which organized the same with the object of engaging in the cultivation of sugar cane, to wit: Frank A. Dillingham, a citizen of the United States and resident of the State of New Jersey; Horace Havemeyer, a citizen of the United States and resident of the State of New York; Edward S. Paine, a citizen of the United States and resident of the State of New York; Edwin L. Arnold, a citizen of the United States and resident of the State of Florida; Frank M. Welty, a citizen of the United States and resident of the State of Ohio; and H. B. Orde, a citizen of Great Britain, and resident of the Dominion of Canada.

III. The defendant partnership and its predecessor Russell & Co., S. en C., since the year 1921, has been owner of the following rural properties in the Island of Puerto Rico, included in the public irrigation system of the south coast, as will be hereinafter set forth:

1. Property No. 295, in the plan of the irrigation system of the south coast of Puerto Rico, known as Cristina, with an area of 914.90 acres, situated in the ward of Amuelas, of the municipality of Juana Diaz, bounding as follows: On the North, the Jacaguas river and lots Nos. 371-A, 374, 375 and 377, and the main road leading from Ponce to San Juan; on the South lot No. 366-A and the Jacaguas river; lots Nos. 291m 923-C, 296, 359, 364 and 366;

Amended Complaint.

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on the East lots Nos. 294, 296-A, 317-A, 319-A and 323-A; and on the West with the Jacaguas river and lots Nos. 371 and 383.

2. Property known as Luciana, marked No. 379, situated in the wards of Collores, Collado and Jacaguas, of the municipality of Juana Diaz, with a total area of 736.71 cuerdas, and bounding as follows: On the North the Jacaguas river; on the South the Jacaguas river and the main road; on the East the road leading from Villalba to Juana Diaz; and on the West lot No. 380 and the Jacaguas river.

3. Property No. 403, of the aforesaid irrigation plan, known as Fortuna, situated in the ward of Sabana Llana, of the municipality of Juana Diaz, with a total area of 913.44 cuerdas and bounding as follows: On the North lots Nos. 307-A, 335, 336, 334, 338, 339, 340, 391, 392, 402, and 423 and the Jacaguas river; on the South, lots Nos. 403 and 413 and the Jacaguas river; on the West lots Nos. 413, 414, 421 and 423.

4. Property No. 309, known as Serranó, in the municipality of Juana Diaz, with an area of 558.69 acres, and bounding as follows: On the North lots Nos. 308 and 312; on the South the Caribbean Sea; on the East lot No. 308 and on the West lots Nos. 308, 310, 311 and 316.

5. Property or lot No. 413, known as Union.

A certified copy of the plan of the irrigation district of the South coast of the Island, in so far as pertinent, is attached to this amended complaint and made a part thereof.

IV. The properties described in paragraph III of this amended complaint, since the year 1915, have been receiving and still receive water, for irrigation purposes, from the public irrigation system of the South coast of Puerto Rico, by virtue of a contract entered into between their owner, Russell & Co., S. en C., predecessor of the defendant partnership in the ownership of same, and the Commissioner of the Interior of Puerto Rico, the said contract having been executed the 26th of August, 1914, and the same was embodied in public deed No. 20, executed in San Juan, Puerto Rico, on June 8, 1916, before notary Frank Antonsanti.

Plaintiff alleges that all the officers of the Government of Puerto Rico in charge of the execution of said contract, fulfilled the same entirely in accordance with its stipulations, and consequently the properties described in paragraph III of this amended complaint received and are still receiving, the full volume of water stipulated for irrigation purposes, and by reason thereof Russell & Co., Sucrs., S. en C., defendant herein, owner of said properties, and its predecessor, who entered into the aforesaid contract, were benefited thereby.

V. Plaintiff alleges that the properties described were not in the past and are not at present subject to the payment of any irrigation tax under the provisions of an Act of Puerto Rico, approved September 8, 1908, entitled: "An Act to provide for the construction of an irrigation system, and to provide revenues therefor; for the temporary appropriation of two hundred thousand dollars to begin such work, and for other purposes", as subsequently amended.

VI. That the first session of the 10th Legislature of Puerto Rico enacted an Act entitled: "An Act fixing a tax on certain lands using water from the southern coast public irrigation system, on which lands no tax whatsoever was levied under the public irrigation law, and for other purposes", and that said Act was approved by the Governor of Puerto Rico on July 8, 1921, and the same became effective 90 days after its approval. Said Act is No. 49 of 1921; and in accordance with the provisions of same, the lands of the defendant partnership described in paragraph III of this amended complaint were subject thereto, and its owners compelled thereby, to pay the special tax fixed by the above Act No. 49 of 1921.

VII. Plaintiff alleges that in strict conformity with the provisions of said Act No. 49 of 1921, the following amounts were assessed on the lands of the defendant partnership, described in paragraph III, to wit:

Amended Complaint.

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Lot No. 295:

For the years 1922-23 to 1933-34:

Quota	\$6,186.90	
Surcharges	2,402.43	
Total		\$8,589.33

Lot No. 379:

For the years 1922-23 to 1933-34:

Quota	10,519.38	
Surcharges	4,087.75	
Total		\$14,607.13

Lot No. 403:

For the years 1922-23 to 1933-34:

Quota	27,599.38	
Surcharges	10,729.24	
Total		38,328.62

Lot No. 309:

For the years 1922-23 to 1933-34:

Quota	15,891.96	
Surcharges	6,177.13	
Total		22,069.09

Lot No. 403:

For the years 1922-23 to 1933-34:

Quota	3,814.68	
Surcharges	1,482.80	
Total		5,297.48

Lot No. 413:

For the years 1922-23 to 1933-34:

Quota	6,320.46	
Surcharges	2,456.77	
Total		8,777.23

Grand Total:

Total quotas \$70,332.76

Total Surcharges 27,336.12

Grand Total \$97,668.88

VIII. Plaintiff alleges that subsequent to the year 1922 the Treasurer of Puerto Rico from time to time has attempted to obtain from the defendant payment of the taxes assessed on said properties in conformity with the provisions of the aforesaid Act No. 49 of 1921, and that in spite of the numerous demands to that end the defendant has refused to pay said tax totally or partially and has hindered the collection of said sum through law suits in the District Court of the United States for the District of Puerto Rico and through other means.

IX. Plaintiff alleges that the total sum owed by the defendant on the aforesaid properties from the years 1922-23 to 1933-34, amounts to \$70,332.76, and that the surcharges owed under said law, amount to \$27,336.12, or a grand total of \$97,668.88, which the defendant owes and has not paid and which the plaintiff, The People of Puerto Rico, is entitled to collect and receive from the defendant, but has not received the same totally or partially.

By virtue whereof, plaintiff prays the court that this amended complaint be sustained and that judgment be rendered in favor of the plaintiff, sentencing the defendant to pay to the Treasurer of Puerto Rico the total sum of \$97,668.88, with interest at the legal rate from the date of filing of the original complaint herein, plus all costs, disbursements and attorneys' fees, caused by this suit, and that the court grant any other remedy which it may deem proper.

San Juan, Puerto Rico, June 8, 1934.

BENJAMIN J. HORTON,

Attorney General,

by M. RODRIGUEZ SERRA,

Assistant Attorney General.

Order.

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Copy served this eighth day of June, 1934.

R. CASTRO FERNANDEZ,

Attorney for the Defendant.

[The same title.]

DEMURRER TO THE AMENDED COMPLAINT.

Now comes the defendant by its undersigned attorneys, and demurs to the amended complaint filed by the plaintiff on June 8, 1934, on the following grounds:

That the amended complaint does not state facts sufficient to constitute a cause of action against the defendant.

Wherefore, defendant prays the court that the complaint be dismissed and plaintiff sentenced to the payment of costs.

San Juan, Puerto Rico, June 18, 1934.

R. CASTRO FERNANDEZ,

Attorney for the Defendant.

Copy served this eighteenth day of June, 1934.

BENJAMIN J. HORTON, *Attorney General,*

by M. RODRIGUEZ SERRA, Assistant Attorney General,

Attorney for the Plaintiff.

[The same title.]

ORDER:

This is an action for the recovery of certain taxes levied on various properties of the defendant, in accordance with Act No. 49 of 1921. It is alleged as a cause of action that the defendant is owner of certain properties described in the amended complaint. That by virtue of the aforesaid act certain taxes were assessed on said properties and that the defendant in spite of the steps taken by the department of finance for the collection of same, has not paid said taxes in toto or partially.

A demurrer for lack of facts to constitute a cause of action was presented to the complaint and in support thereof it is claimed that the amended complaint does not state facts but conclusions of law.

Although we agree with the defendant that certain averments of the amended complaint, such as that referring to the contract entered into between the defendant and The People of Puerto Rico, are immaterial and irrelevant to the cause of action, we can not accept that it is necessary that the plaintiff states in its complaint why the defendant is bound to pay the tax which has given rise to this action. It will suffice to allege that the tax was assessed by virtue of the Act of 1921 and that the defendant has not paid the same. Such an averment on the part of the plaintiff is not a conclusion of law but the statement of an ultimate fact.

As the complaint does not state any reasons why the properties in question should not be subject to the tax giving rise to this suit, that would be a matter of defense to be alleged by the defendant in its answer, if there is in fact some reason why it should not pay the aforesaid tax.

Wherefore, the demurrer to the complaint is overruled, and the defendant is granted a term of ten days to answer.

Let the parties be notified.

Given in San Juan, Puerto Rico, this fourth day of December, 1934.

A. R. DE JESUS, *Judge*.

The parties were notified of the above order, this fifth day of December, 1934.

MANZANO, *Assistant Secretary*.

ANSWER TO THE AMENDED COMPLAINT.

Now comes the defendant by its undersigned attorneys and in answer to the amended complaint filed herein on June 8, 1934, respectfully alleges:

1. It admits the facts averred in paragraph I of the amended complaint.
2. It admits the facts averred in paragraph II of the amended complaint.
3. From the facts averred in paragraph III of the amended complaint the defendant admits being the owner of Cristina

estate, 295; Luciana estate, 379; Fortuna estate, 403, and Serrano estate, 309; but denies that it is or ever was the owner of Union estate, 413, and on the contrary alleges that since the year 1921 it has been lessee of said property No. 413, which is composed of Union and Placeres estates.

4. From the facts averred in paragraph IV of the amended complaint, the defendant admits that the properties described in paragraph III of the amended complaint have received water for irrigation purposes by virtue of a contract entered into with the Commissioner of the Interior of Puerto Rico, on August 26, 1914, embodied in public deed No. 20, executed in this city on July 8, 1916, before notary public Frank Antonsanti, copy of which is attached to this answer as a part thereof, marked "Exhibit A". As regards the other facts averred in said paragraph, the defendant on information and belief denies that all the officers of the Government of Puerto Rico in charge of performing said contract, faithfully discharged the stipulations of same; and denies, furthermore that the described properties received in the past, and are receiving at present, the full volume of water agreed for irrigation purposes; and denies furthermore that the owners thereof, the defendant, and its predecessor, who executed the aforesaid contract, were benefited thereby.

5. It admits the facts averred in paragraph V of the amended complaint.

6. From the facts averred in paragraph VI of the amended complaint the defendant admits that the aforesaid Act No. 49 of 1921 was enacted, but denies that under its provisions the lands of the defendant described in the amended complaint were subject thereto and their owners compelled to pay the special tax fixed thereon.

7. From the facts averred in paragraph VII of the amended complaint the defendant denies that in strict conformity with the provisions of the aforesaid Act No. 49, of 1921, the amounts specified in said paragraph were assessed on the lands of the defendant.

8. From the facts averred in paragraph VIII of the amended complaint, defendant denies having hindered or obstructed the collection of the aforesaid taxes through law suits before the United States District Court for the District of Puerto Rico, or through other means, and on the contrary alleges that in bringing this case before said court all the defendant did was to enforce a vested contractual right and to defend itself from the effects of an entirely unconstitutional and void act, as held by the United States Circuit Court of Appeals for the First Circuit, in this same case, entitled *People of Puerto Rico v. Havemeyer, et al.*, 60 Fed. (2d) 10.

9. From the facts averred in paragraph IX of the amended complaint the defendant denies owing the taxes specified in said paragraph or any amount for such reason, and further denies that the plaintiff is entitled to collect and receive from the defendant any sum of money for such taxes.

FIRST SPECIAL DEFENSE.

10. That the defendant is and has been since the year 1921 in full ownership and has been and is in possession of the four properties known as Fortuna, Cristina, Luciana and Serrano, described in paragraph III of the amended complaint; and that by virtue of certain concessions, royal decrees from the Crown of Spain and their prescriptions, is and has been during all that time, owner of certain water rights existing in favor of said lands, to be used thereon for irrigation purposes, from the Jacaguas, a non-navigable river flowing into the Caribbean Sea; and that the said water rights appurtenant to said lands, are generally described as follows:

a. For parcel known as Fortuna estate, with an approximate area of 312.07 hectares of land, the right to take from the Jacaguas river, for irrigation purposes, 139.75 liters of water per second, equivalent to 3,572.910 acre-feet of water per year, for the aforesaid Fortuna estate.

b. For parcel known as Cristina estate, with an approximate

area of 308.14 hectares of land, the right to take from the Jacaguas river, for irrigation purposes, 106.74 liters of water per second, equivalent to 2,728.969 acre-feet of water per year, for the aforesaid Cristina estate.

c. For parcel known as Luciana estate, with an approximate area of 243.58 hectares of land, the right to take from the Jacaguas river, for irrigation purposes 82.54 liters of water per second, equivalent to 2,111.142 acre-feet of water per year, for the aforesaid Luciana estate.

d. For parcel known as Serrano estate, with an approximate area of 219.15 hectares of land, the right to take from the Jacaguas river, for irrigation purposes, 102.47 liters of water per second, equivalent to 2,619.769 acre-feet of water per year, for the aforesaid Serrano estate.

11. On information and belief defendant avers that the predecessors in interest of the defendant, for over 20 years prior to the 26th of August, 1914, and the defendant and its predecessor in interest, at all times subsequent to the 26th of August, 1914, have been and the defendant is at present, taking and using, whenever it is physically possible to do so, water from the Jacaguas river for the irrigation of said estates, and that by virtue of the aforesaid grants, royal decrees, uses and prescriptions, has taken water up to a total of 11,032.79 acre-feet per year, independent of the torrential water, the aforesaid water having been taken from the river bed through intakes, constructed and established for that purpose by the defendant and its predecessors in interest.

12. On information and belief defendant avers that it is and has been at all times prior to the year 1921, owner, by virtue of certain grants, royal decrees of the Spanish Crown, uses and prescriptions, of the right to take and use for the irrigation of one or more of its aforesaid properties, torrential water of the aforesaid Jacaguas river; and that the predecessors in interest of the defendant, for over twenty years prior to the 26th of August, 1914, have been taking and using for the irrigation of said estates, and the defendant and its predecessors in title at all times, since

August 26, 1914, have been and the defendant is still taking and using for said purpose, torrential water from the bed of the Jacaguas river when the river is at high level, without limit as to the quantity, except as limited by the size and situation of the torrential intake and of the canals carrying the water from the intake to the aforesaid properties, all of this by virtue of the aforesaid concessions, royal decrees, uses and prescriptions and by virtue of the contract attached to this answer, marked "Exhibit A", to which we shall refer hereinafter.

13. That The People of Puerto Rico authorized and constructed a public irrigation system in conformity with the public irrigation act approved September 18, 1908, as amended; and that in the construction of said irrigation system it built a dam to store and deposit part of the water of the Jacaguas river, which dam is known as Guayabal Dam and extends across the bed of the aforesaid Jacaguas river above the intakes that the defendant uses as well as above those used by the defendant and its predecessors in title to take and use water for the irrigation of the aforesaid estates and of Union and Placeres estates mentioned hereinafter.

14. That prior to the 26th of August, 1914, The People of Puerto Rico by its Commissioner of the Interior and in conformity with the provisions of said public irrigation act, with the object of legally storing the water of the Jacaguas river beyond the Guayabal Dam, requested the predecessors in title of the defendant to waive and abandon their rights to take and use water from the Jacaguas river, both the ordinary and the torrential waters, for irrigation purposes, acquired by virtue of the aforesaid concessions, royal decrees, uses and prescriptions in favor of the four parcels of land above described, and that to this proposition they flatly refused.

15. That subsequently thereto The People of Puerto Rico by its Commissioner of the Interior and through its Attorney General entered into dealings with the predecessor in title of the defendant, Fortuna Estates, with the object of determining the time and place in which the amount of ordinary water, not of a torrential

nature, that the said Fortuna Estates was entitled to take for Fortuna, Cristina, Luciana and Serrano Estates, under the rights acquired by it through the aforesaid concessions, royal decrees, uses and prescriptions, should be delivered to it after the construction of the Guayabal Dam was finished; and that as a result of said negotiations the predecessor in title of the defendant, Fortuna Estates, and The People of Puerto Rico, covenanted and agreed that the water of the Jacaguas river, which was not of a torrential nature, and to which said entity was entitled and to which the defendant is entitled to take and use for the aforesaid Fortuna, Cristina, Luciana and Serrano farms, in conformity with the aforesaid concessions, royal decrees, uses and prescriptions, amounting to 11,032.79 acre-feet per year, would thenceforth be taken and used by it in regular daily quantities amounting to 8,258.90 acre-feet per year, through several of the intakes situated within its properties, and that the balance of 2,773.81 acre-feet per year, that is 3.86 feet per second, would be taken by it at the Aruz Pump or at the intake of said river, from any water of said river that might not be necessary for furnishing it to the owners of the lower concessions existing prior to the 26th of August, 1914, with the amount of water that they might be entitled by virtue of said concessions or through covenants with The People of Puerto Rico.

16. That in accordance with said covenant, Fortuna Estates and The People of Puerto Rico executed on the 26th of August, 1914, a contract comprising everything agreed between them, as alleged in the foregoing paragraph, and that on June 8, 1915, the said contract was embodied in a public deed, copy of which is attached to this answer as Exhibit A. The defendant alleges that in the said contract the aforesaid water rights of Fortuna Estates for the irrigation of said farms were acknowledged by The People of Puerto Rico and that the same continued in full force and effect, and were in no wise or form waived or abandoned, the manner of receiving the water being solely modified temporarily, though not the right to receive said water or the amount thereof, which re-

mained unchanged. The defendant alleges moreover that in carrying out the aforesaid negotiations and in executing the aforesaid contract, the Commissioner of the Interior acted within the authority granted to him by the Legislature in approving an act of August 8, 1913, which act acknowledged furthermore the property rights of the holders of Spanish grants, among which is found the predecessor in title of the defendant, Fortuna Estates.

17. That subsequently thereto Fortuna Estates sold, ceded and transferred to the defendant the four parcels of land or estates above described, with their rights, uses and privileges in the concessions, royal decrees, uses and prescriptions aforementioned, and with all the rights, titles and interest in the aforesaid contract marked "Exhibit A", as well as to the waters to which it was entitled thereunder.

18. On information and belief the defendant alleges that Jose A. Poventud, Sergio Torruella Cortada and heirs of J. Serralles, are, and that they and their predecessors in title, were at all times prior to the year 1921, absolute owners of two parcels of land situated in the municipality of Juana Diaz, Puerto Rico, known as Union and Placeres estates, described in paragraph III of the amended complaint, as property No. 413, and through their lessee the defendant herein, is and was at all times prior to the year 1921, in the physical possession of same and that they are and have been during all that time, by virtue of the concessions, royal decrees of the Spanish Crown, uses and prescriptions, the owners of certain water rights in favor of said lands to be used thereon for irrigation purposes, from the said Jacaguas river; and that the aforesaid lands and water rights appurtenant thereto are described generally as follows:

a. Parcel known as Union estate, with an approximate area of 150.14 hectares of land, entitled to take from the Jacaguas river, for the irrigation of same, 39.60 liters of water per second, equivalent to 1,013.56 acre-feet of water per year, for said Union estate.

b. Parcel known as Placeres estate, with an approximate area of 240.54 hectares of land, entitled to take from the Jacaguas river,

for the irrigation of same, 22 liters of water per second, equivalent to 563.75 acre-feet of water per year, for said Placeres estate.

19. That subsequently thereto, but prior to 1921, the owners of said two parcels of land leased the same for a number of years to the predecessors in title of the defendant and as incidental to said lease, transferred to the predecessor in title of the defendant all the rights that, through concessions, royal decrees, uses and prescriptions, or contract, they had to take water for the irrigation of said lands, and that in accordance with said lease the lessee is bound to pay any tax that may be assessed on said lands.

20. On information and belief the defendant alleges that the owners of the aforesaid two parcels, their predecessors in interest and the predecessors in interest of the defendant, as lessees, have been for over 20 years prior to the 26th of August, 1914, taking and using, and the defendant and its predecessor in title, as lessees, have been at all times, subsequent to the 26th of August, 1914, and the defendant is at present, taking and using, whenever that is physically possible, water from the Jacaguas river for the irrigation of said estates, by virtue and in accordance with the aforesaid concessions, royal decrees, uses and prescriptions.

21. On information and belief, that the aforesaid Jose A. Poyentud, Sergio Torruella Cortada and heirs of J. Serralles, are owners moreover, by virtue of certain concessions, royal decrees of the Crown of Spain, uses and prescriptions, of the right to take and use torrential water from the Jacaguas river for the irrigation of said Union and Placeres farms, and their predecessors in title through the defendant and the predecessors in title of the latter, as lessees, for over 20 years prior to the 26th of August, 1914, have been taking and using for the irrigation of said estates, and the defendant, is taking and using for said purpose, torrential water from the bed of the Jacaguas river, when the river is at high level, without limitation as to quantity, except as limited by the size and situation of the torrential intakes and of the canals that carry the water from the intake to the aforesaid properties, all of this in accordance and by virtue of the aforesaid concessions,

royal decrees, uses and prescriptions and in conformity with the contract attached to this answer, marked "Exhibit A", to which we shall refer hereinafter.

22. That prior to the 26th of August, 1914, The People of Puerto Rico through its Commissioner of the Interior and in accordance with the provisions of the public irrigation act and in order to legally attempt to dam the water of the Jacaguas river beyond the Guayabal Dam, requested from the predecessors in title of the aforesaid Jose A. Poventud; Sergio Torruella and heirs of J. Serrallés, and from the predecessors in title of the defendant, to waive and abandon their right to take and use from the Jacaguas river, both ordinary and torrential waters for irrigation purposes, acquired by virtue of the aforesaid concessions, royal decrees, uses and prescriptions in favor of the two parcels above described known as Union and Placeres, to all of which they flatly refused.

23. That subsequently to the facts averred in the preceding paragraphs, The People of Puerto Rico, through its Commissioner of the Interior and through its Attorney General, entered into negotiations with the owners at the time of the aforesaid two parcels, Jose A. Poventud, Isabel Cortada, widow of Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, predecessors in title of the present owners, and with Fortuna estates, predecessor in title of the defendant, as lessee, with the object of determining the time and places from where the amount of water, besides the torrential water, which they were entitled to take for Union and Placeres estates in accordance with the rights acquired by them under the aforesaid concessions, royal decrees, uses and prescriptions, should be delivered to them once the construction of the Guayabal Dam was finished; and that as a result of said negotiations the said persons and The People of Puerto Rico covenanted and agreed that the waters of the Jacaguas river, which were not of a torrential nature, that said co-owners were entitled to take for the irrigation of said Union and Placeres estates, under the aforesaid concessions, royal decrees, uses and prescriptions, amounting to 1,579.31 acre-feet of water per year, be thenceforth

taken and used by them in regular daily quantities amounting to 946.55 acre-feet per year in several of the intakes situated within their properties.

24. That in accordance with said covenant, the aforesaid co-owners on the 26th of August, 1914, executed a contract with The People of Puerto Rico, comprising everything that had been covenanted between them as alleged in the preceding paragraph, copy of which is attached to this answer as Exhibit B and as a part thereof. The defendant alleges furthermore that in the said contract the water rights of the aforesaid Jose A. Poventud, Isabel Cortada, widow of Poventud, Juan Torruella Cortada, and Sergio Torruella Cortada, as well as those of its lessee Fortuna Estates, were acknowledged by The People of Puerto Rico, continued in full force and effect and were in no wise or manner waived or abandoned by them, the same having been solely modified temporarily, as to the manner of receiving the water, but not as to the right to receive the same nor as to the quantity of same, these rights remaining unchanged. The defendant alleges furthermore that the Commissioner of the Interior in carrying out the aforesaid negotiations and in executing the said contract, acted in accordance with the authority granted to him by the Legislature of Puerto Rico in approving Act of August 8, 1913, which acknowledges furthermore the property rights of the holders of Spanish concessions, among which is found the above-mentioned co-owners as predecessors in title of the present owners and of Fortuna Estates, predecessor in title of the defendant.

25. That subsequently thereto, while Fortuna Estates was lessee of the aforesaid Union and Placeres properties including all the water rights enjoyed by said properties or by the owners thereof, it sold, assigned and transferred to the defendant, the lease it had on said properties including all the rights, benefits and privileges acquired by virtue of the aforesaid concessions and contract.

26. That subsequently thereto and in conformity with a judgment rendered on July 16, 1918, by the District Court of the United States for the District of Puerto Rico, in equity case No.

970, entitled "Russell & Co. Succrs., plaintiff, v. Emilio V. Henna, et al., defendants, and The People of Puerto Rico, intervener", affirmed by the Circuit Court of Appeals for the First Circuit (*People v. Russell & Co.*, 268 Fed. 723), the water rights of the defendant under the aforesaid contract of August 26, 1914, in favor of Fortuna, Cristina, Luciana and Serrano estates, was declared valid and existing and a permanent injunction was issued against The People of Puerto Rico, its agents and employees, restraining them from deviating and obstructing the waters of the Jacaguas river, in excess of those necessary to cover the concessions existing on said river prior to August 26, 1914; and the defendant alleges that there has been no change in the rights of the defendant over said properties from the date of said judgment to the present.

27. That the right of the aforesaid Jose A. Poventud, Sergio Torruella Cortada and heirs of J. Serralles, and those of the defendant, as lessee, to take water under the contract of August 26, 1914, for Union and Placeres estates, is and has always been in every respect similar to the right of the defendant to take water under the aforesaid contract of August 26, 1914, in favor of Fortuna, Cristina, Luciana and Serrano estates.

28. That neither the defendant nor the aforesaid estates, have received or are receiving or have been or are being supplied with water for the irrigation of said properties from the public irrigation system of the southern coast, with the exception of those waters which the defendant and the aforesaid estates were and are entitled to receive, under and by virtue of the aforesaid concessions, royal decrees of the Spanish Crown, uses and prescriptions and under and by virtue of the aforesaid contracts of August 26, 1914.

29. That Act No. 49 of 1921, approved July 8, 1921, entitled "An Act fixing a tax on certain lands using water from the southern coast public irrigation system, on which lands no tax whatsoever was levied under the public irrigation law, and for other purposes", under which the plaintiff claims to be entitled to

assess the taxes and surcharges claimed herein, in so far as it attempts to assess and levy a tax on the aforementioned lands, is unlawful, unconstitutional and void and has no legal force or effect, for the following reasons:

(a) Because the aforesaid Act No. 49, of 1921, impairs the obligations contracted under the aforesaid contracts of August 26, 1916 (Exhibits A and B), which contracts are valid and were in full force and effect at the time said act was approved; all of this in violation of the provisions of the United States Constitution and of Section 2 of our Organic Act, which provides that: "no law impairing the obligation of contracts shall be enacted".

(b) Because said Act No. 49, of 1921, infringes the provisions of the United States Constitution and of our Organic Act, inasmuch as it delegates legislative powers to the Commissioner of the Interior.

(c) Because said Act No. 49 of 1921 violates the provisions of the United States Constitution, and our Organic Act, because it attempts to levy a special tax on certain lands without the corresponding benefit to said lands or their owners, thus depriving the defendant of its property without due process of law.

(d) Because the aforesaid Act No. 49 of 1921, violates the provisions of the United States Constitution and our Organic Act, inasmuch as it attempts to condemn property rights of the defendant, to wit: the aforesaid water rights corresponding and forming part of the above-mentioned parcels of the defendant, thus depriving the latter of its property without due process of law and condemning private property for public purposes without due compensation.

(e) Because the aforesaid Act No. 49 of 1921 violates the provisions of the United States Constitution and of our Organic Act, inasmuch as it attempts to condemn property rights of the defendant, to wit: the aforesaid water rights, acquired by the defendant by virtue of the aforesaid contract of August 26, 1914, thus depriving the defendant of its property without due process of law

and condemning its private property for public purposes without just compensation.

(f) Because the aforesaid Act No. 49 of 1921 violates our Organic Act, inasmuch as it attempts to levy a tax on property of the defendant only and not over other properties in the Island of Puerto Rico, thus infringing the rule of uniformity contained in our Organic Act.

(g) Because the aforesaid Act No. 49 of 1921 violates the Treaty of 1898 with Spain, known as the Treaty of Peace, inasmuch as it impairs and destroys property rights of the defendant granted by the Spanish government which rights were valid and existent at the time of executing and promulgating the aforesaid treaty.

(h) Because the aforesaid Act No. 49 of 1921 violates our Organic Act inasmuch as it attempts to levy said tax on a limited class of land, arbitrarily selected and without receiving any benefit therefrom, thus violating the provisions of our Organic Act which guarantees the equal protection of the laws.

(i) Because the aforesaid Act No. 49 of 1921 violates the provisions of the United States Constitution and of our Organic Act inasmuch as it provides the manner in which the tax shall be determined and fixed, and containing no provision with regard to notice or opportunity to the defendant and to other landowners to be heard in connection with same or any provisions granting the right of appeal or review, thus depriving the defendant of its property without due process of law.

AS SECOND SPECIAL DEFENSE.

50. That on June 12, 1926, in accordance with a final decree entered by the District Court of the United States for Puerto Rico, dated June 11, 1926, in equity case No. 1250, entitled "Horace Havemeyer, et al. v. Juan G. Gallardo", this defendant obtained, after the corresponding trial on the merits of the case, a permanent injunction restraining the defendant therein from levying or collecting from the defendant herein or over the lands of the defendant above described, any tax authorized by Act No. 49 of 1921,

approved July 8, 1921; that said case was appealed to the United States Circuit Court for the First Circuit, and said appeal was pending before said court on March 4, 1927, when the Congress of the United States approved an amendment to Section 48 of our Organic Act, prohibiting the issuance of injunctions to restrain the assessment or collection of taxes.

31. That the Congress of the United States on April 23, 1928, approved Act No. 302, which provides substantially that the Treasurer of Puerto Rico shall enforce the assessment and collection of any tax whose collection has been restrained by an injunction decreed by the District Court of the United States for the District of Puerto Rico; through the corresponding trial instead of through attachment, garnishment or restraint proceedings, or through any other summary administrative proceeding, at any time within the year following the approval of said act, that is on or before April 23, 1929.

32. That although the present case was brought by the plaintiff, The People of Puerto Rico, in accordance with the authority conferred thereto by the Congress of the United States, in said Act No. 302, of April 23, 1928, the original complaint was not brought until June 24, 1930, that is two years and two months after the approval of said Act No. 302, of April 23, 1928, for which reason, in accordance with said act, any right which the plaintiff might have to collect said tax has prescribed as well as the cause of action.

Wherefore, the defendant respectfully prays this Honorable Court, that in due course the complaint be overruled, and plaintiff sentenced to the payment of costs.

San Juan, Puerto Rico, April 1, 1935.

R. CASTRO FERNANDEZ,

Attorney for the Defendant.

R. Castro Fernandez, being duly sworn, deposes and says:

That he is the attorney for the defendant; that he has drawn and read the preceding answer and that the facts therein averred

are true and are known to him on information which he considers true; that the reason why this answer is not verified by the defendant is that the latter is a civil partnership and all its partners reside and are at present out of the Island of Puerto Rico, and the deponent is authorized to verify the same.

R. CASTRO FERNANDEZ.

Affidavit No. 53.

Sworn to and subscribed before me by R. Castro Fernandez, of full age, married, attorney at law and resident of this city, to me personally known this first day of April, 1935.

JOSE LOPEZ BARALT,

Notary Public.

Copy served this day of April, 1935.

BENJAMIN J. HORTON,

Attorney General,

by M. RODRIGUEZ SERRA,

Assistant Attorney General,

Attorney for the Plaintiff.

EXHIBIT A.

IRRIGATION CONTRACT.

Number Twenty

In the City of San Juan, Island of Porto Rico on this eighth day of June, A.D. nineteen hundred fifteen before me, Frank Anton-santi, attorney at law and notary public, with office in the Royal Bank Building, San Juan, Porto Rico, and duly licensed to practice throughout the Island, personally appeared: Manuel V. Domenech, who is of age, married, a resident of this city, by profession a civil engineer, and at the present time Commissioner of the Interior of Porto Rico, which function he has been discharging since the twenty-ninth day of October, A.D. nineteen hundred fourteen, as party of the first part, and Julius Umbach, who is of lawful age, married, a merchant and a resident of the City of Ponce, as party of the second part.

The party of the first part appears in his official capacity of Commissioner of the Interior of Porto Rico, and in representation and on behalf of The People of Porto Rico, and the party of the second part does so as attorney in fact and on behalf of the Fortuna Estates, which is a corporation organized under the laws of the State of New York, having its principal office in Porto Rico in the City of Ponce.

I, the notary, hereby certify as to being personally acquainted with the appearing parties they assuring me that they are in the full enjoyment of their civil rights, which fact as well as the respective representations of the said parties is personally known to me.

The said appearing parties thereupon freely state:

That on the twenty-sixth day of August, A.D. nineteen hundred fourteen, a certain private contract was entered into by and between Ernest S. Wheeler, as Assistant Commissioner of the Interior of Porto Rico, at the time acting as Commissioner of the Interior in representation and on behalf of The People of Porto Rico, as party of the first part, and the Fortuna Estates, represented by its attorney in fact Julius Umbach, as party of the second part, and which contract is fully transcribed hereinafter.

That by virtue of the said private contract hereinbefore referred to and which was acknowledged before F. Manuel Toro and Damian Monserrat, notaries public, on the twenty-sixth and twenty-eighth of August, nineteen hundred fourteen, and as specially provided by clause sixteenth thereof, it was agreed by the parties thereto that a public document should be drawn embodying the said private agreement, at the request of either of the parties to said contract, and, the parties thereto and hereto having mutually expressed their desire at this time to embody the said private agreement in a public document, for carrying into effect their desire, they hereby state:

That the private agreement as entered into by and between the parties thereto is as follows, to wit:

Fortuna Estates Contract

Memorandum of Agreement made this twenty-sixth day of August, 1914, between Ernest S. Wheeler, Assistant Commissioner of the Interior, discharging since January 17, 1914, the duties and functions of Commissioner of the Interior of Porto Rico, now in the discharge of such duties and functions and in possession of said office and acting as such Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, party of the first part, and the Fortuna Estates, a New York corporation, party of the second part.

Whereas, Fortuna Estates is the owner in fee simple of four (4) tracts of land situated in the Municipality of Juana Diaz, in the district of Ponce, in the Island of Porto Rico, and claims as appurtenant thereto, by virtue of certain concessions, royal decrees of the Kingdom of Spain and user, the right to use thereon waters from the River Jacaguas for the irrigation thereof, the said lands and water rights being generally described as follows:

1. One tract known as the Estate "Fortuna", comprising approximately 312.07 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 139.75 liters of water per second, equivalent to 3,572.910 acre feet of water per year, for said estate "Fortuna".

2. One tract known as the Estate "Cristina" comprising approximately 308.14 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 106.74 liters of water per second, equivalent to 2,728.969 acre feet of water per year for said Estate "Cristina".

3. One tract known as the Estate "Luciana", comprising approximately 243.58 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 82.51 liters of water per second, equivalent to 2,111.142 acre feet of water per year for said Estate "Luciana".

4. One tract known as the Estate "Serrano", comprising approximately 219.15 hectares of land, with an appurtenant right to

take from the River Jacaguas, for the irrigation thereof, 102.47 liters of water per second, equivalent to 2,619,769 acre feet of water per year for said Estate "Serrano".

And whereas, Fortuna Estates and its predecessors in title have been for upwards of twenty years and are now taking waters from the River Jacaguas for irrigation of said tracts of land, and claims to have been doing so under and by virtue of the said concessions and the said royal decrees of the Kingdom of Spain, granting, approving and confirming the water rights aforesaid (a list of said concessions and decrees being hereto annexed and marked "Schedule A"), such waters having been taken from the bed of said River Jacaguas through intakes built and established for the purpose by the predecessors in title of the Fortuna Estates, and

Whereas, Fortuna Estates also claims the right to take for the irrigation of the said four (4) tracts of land hereinabove mentioned torrential waters from the bed of the Jacaguas River during the time of high water without limit as to quantity except as limited by the size and the location of the intakes and the canals leading therefrom to the respective tracts of land aforesaid (a list of the concessions therefor being hereto annexed and marked "Schedule B"), and that said rights for the taking and use of such torrential waters have been exercised by the Fortuna Estates and its predecessors in title for upwards of twenty years, and are now so exercised; and

Whereas, The People of Puerto Rico has authorized and undertaken the construction of a public irrigation system, in accordance with the Public Irrigation Law approved September 18, 1908, and the amendments thereto, and has recently, in the construction of the said irrigation system, erected a dam (known as the Guayabal Dam), across the bed of the said Jacaguas River above the said intakes which the said Fortuna Estates uses for taking water for irrigating its said four tracts of land in accordance with its said claim of right and The People of Porto Rico proposes to use the said dam for the impounding and storage of a part of the waters

of the River Jacaguas and of the River Toro Negro, a stream rising on the North side of the main watershed of the Island of Porto Rico, whereby the source of supply of the waters which the Fortuna Estates claims to be entitled to by reason of the aforesaid concession, royal decrees and user for the irrigation of the four tracts of land aforesaid, may be interrupted and impaired; and

Whereas, said water rights and concessions have not been relinquished or surrendered to The People of Porto Rico and said Fortuna Estates is unwilling to enter into any agreement or arrangement for the relinquishment or surrender of the said water right and concessions; and

Whereas, the amount of water taken by the Fortuna estates and its predecessors in title for the irrigation of said four tracts of land under its said claims of water rights varies from month to month in accordance with the rainfall in the watershed of the said Jacaguas river, so that it is impossible to determine in advance the exact amount of water to which the Fortuna Estates is entitled under the said claimed water rights for any fixed period of time, and The People of Porto Rico (notwithstanding the construction and operation of said Guayabal Dam), is ready to deliver from the said Jacaguas river to the said Fortuna Estates the amount of water to which the latter may be entitled under its said concessions, but, in order to facilitate and make more certain the operation of the said dam and the irrigation system of which it is a part, desires to determine and agree upon an amount of water which, delivered regularly, may, under all attending circumstances, be considered to be fair equivalent in value for irrigation purposes of the amount of water which the Fortuna Estates would under ordinary circumstances take and use under the said water rights and concessions; and

Whereas, the Commissioner of the Interior is authorized and empowered, by Section 13 of the amendment to the Public Irrigation Law, approved August 8, 1913, after consulting with the Attorney General of Porto Rico as to the validity and legal status of the said water rights or concessions, to enter, on behalf of The

People of Porto Rico, into agreement with the owner of the said water rights or concessions upon an amount of water equivalent to the water taken and used under said water rights and concessions and as to the time, place and conditions of delivery thereof to the lands to which the said water rights or concessions are appurtenant; and

Whereas, The Attorney General of Porto Rico has been consulted, as provided by said Act;

Now, therefore, in consideration of the premises and of the covenants and agreements on the part of each party hereinafter contained, said Acting Commissioner of the Interior in representation and on behalf of The People of Porto Rico, party of the first part, and said Fortuna Estates, do hereby covenant and agree as follows:

First. The parties hereto hereby agree that the quantities of water specified in this paragraph, delivered uniformly through the year, subject to the terms and conditions specified in this agreement, together with the additional water the right to take which is provided for or reserved in paragraphs Third and Fourth hereof, are the fair equivalent in value of the water which the said Fortuna Estates takes under and pursuant to the concessions and water rights claimed by it, and The People of Porto Rico will, subject to the conditions and limitation hereinafter specified and at the times, places and subject to the conditions of delivery hereinafter provided for, make delivery to the Fortuna Estates, for the irrigation of the said tracts of land hereinabove referred to, of the said amounts of water, to wit:

For the Estate Fortuna, 3,306.45 acre feet per year;

For the Estate Cristina, 1,312.48 acre feet per year;

For the Estate Luciana, 1,260.22 acre feet per year;

For the Estate Serrano, 2,379.83 acre feet per year;

The waters so to be delivered shall be delivered, subject to the conditions hereinbelow expressed, in substantially equal quantities from day to day, to wit:

For the Estate Fortuna, 9.06 acre feet daily;
For the Estate Cristina, 3.59 acre feet daily;
For the Estate Luciana, 3.45 acre feet daily;
For the Estate Serrano, 6.52 acre feet daily;

Second. The People of Porto Rico will deliver the said water as follows:

(a) The water deliverable hereunder for the Estate Fortuna, at the intake provided by Fortuna Estate for a reservoir, established on the Estate Cristina

(b) The water deliverable hereunder, for the Estate Cristina, as follows:

741.21 acre feet per annum at the intake provided by Fortuna Estates for a reservoir established on the Estate Cristina, and

571.27 acre feet per annum in the bed of the river to be taken by pump at a pumping station heretofore established by the Fortuna Estates near the right bank of the said Jacaguas river, known as the Aruz Pumping Station.

(c) The water deliverable hereunder for the Estate Serrano, at the present low-water intake of that Estate on the Jacaguas river.

Except in the cases of shortage of water in the reservoir behind the Guayabal Dam hereinafter provided for, the presence of water in the river bed at the intakes of the Aruz pumping station and the Serrano Canal, respectively, in quantities sufficient to permit the taking at the said intakes of the amounts of water specified shall be deemed to be deliveries in accordance with the last two provisions.

The People of Porto Rico, however, reserves the right, upon giving twenty-four hours notice to the manager or other person in authority of the Estate Serrano to deliver such water at the intakes established by Fortuna Estates for the reservoir upon the Estate Cristina.

(d) The water deliverable hereunder for the Estate Luciana, at the intake provided by Fortuna Estates for a reservoir established on the Estate Luciana.

Third. Fortuna Estates is hereby granted the right while this agreement remains in force to take in addition to all amounts of water above specified, from the Jacaguas river by pump at the said Aruz Pumping Station, water which may be available there for irrigation of any of its said lands, to the extent that such taking shall not deprive any owners or users of subsisting water rights or concessions upon the Jacaguas river of the water to which such owners or users may be entitled, either by virtue of such water rights or concessions or by virtue of any agreement or agreements in regard thereto entered into or to be entered into by them with The People of Porto Rico; Provided, however, that should The People of Porto Rico at any time undertake the development and utilization of the surplus waters of this part of the Jacaguas river, this right shall be understood to be limited to a maximum usage of 3.86 second feet.

The Fortuna Estates shall maintain at the said Aruz Pumping Station an accurate and appropriate measuring device for the measurement of the water taken from the river at such station, which shall at reasonable time be subject to inspection by the properly accredited employees of the Irrigation Service.

Fourth: In addition to the amounts of water hereinbefore set forth, the Fortuna Estates hereby reserves and shall have the right to take torrential waters from the Jacaguas River through its head-gates at present existing for the use of torrential waters. Such head-gates, wherever they do not conform to the terms of the concession, shall be reconstructed in conformity therewith, and such use of torrential waters shall be subject to such priorities in the use of torrential waters as may exist in the said Jacaguas River. The foregoing provision, however, shall not in any way limit The People of Porto Rico from restraining all of the torrential flood waters which it may desire and which it may be legally entitled to restrain in the reservoir above the Guayabal Dam.

To the extent that there may be waters derived through underground filtration or seepage from the River Jacaguas or its tribu-

taries or from the reservoir maintained behind the said Guayabal Dam, which rise to or near the surface of the ground within the boundary lines of any so-called "poyal" or "semi-poyal" portions of any of the tracts of land owned, leased, operated or cultivated by the Fortuna Estates, its successors or assigns, or any waters so derived in wells made or to be made upon any portions of said lands or any of them, which are not strictly subterranean waters, within the meaning of that term as used in the Laws of Porto Rico, and the full property of the owner or possessor of said lands, the said Fortuna Estates, its successors, lessees and assigns, while this agreement remains in force, may make use of the said waters and all portions thereof in such manner and for such purposes as it or they shall from time to time elect without payment or responsibility to The People of Porto Rico for or in respect thereto, except in so far as such right and the means adopted or to be adopted for its exercise may be limited, modified or restricted by the provisions of the Laws of Waters.

Fifth: During ten days in each year, while the agreement is in force, The People of Porto Rico shall deliver to said Fortuna Estates, and the latter may take and use, at its present intakes in the Jacaguas River (as indicated upon the annexed chart furnished by Fortuna Estates marked "Schedule C") built and used for said respective tracts of land, in lieu of all quantities of water elsewhere specified in this agreement except in Section "Fourth" the amount of water which said Estates claims to be entitled to take for each of said four tracts of land under the said concessions and water rights, to wit:

For the Estate Fortuna, 139.75 liters of water per second;

For the Estate Cristina, 106.74 liters of water per second;

For the Estate Luciana, 82.54 liters of water per second;

For the Estate Serrano, 102.47 liters of water per second;

The presence of water in the river bed of the Jacaguas River, at the openings of the said intakes, in quantities sufficient to permit the taking by the Fortuna Estates of the quantities of water speci-

fied in this paragraph, shall be deemed a delivery in accordance with this paragraph on behalf of The People of Porto Rico.

Forty-eight hours' notice shall be given, by or on behalf of the Irrigation Service, to the manager of or other person in authority upon the Fortuna Estates, of the proposed delivery of water to the Fortuna Estates in accordance with the terms of this section instead of in accordance with the other terms of this agreement.

Sixth. Whenever and as long as there is no storage water in the reservoir behind said Guayabal Dam, The People of Porto Rico shall deliver, subject to the terms of this agreement, to the Fortuna Estates the quantities of water herein provided for from the flow of the Jacaguas River exclusive of water added thereto from the Toro Negro River; but such delivery shall be subject to be cut off or diminished when and so long as and to the extent that such flow is insufficient to supply all water deliverable to the owners or users of subsisting valid water rights or concessions having priorities for the use of the waters of the Jacaguas River (whether by virtue of such rights or concessions, or by virtue of agreement with regard thereto entered into between such owners or users and the Commissioner of the Interior or any other person or body authorized by law to enter into such agreements in representation of The People of Porto Rico) in accordance with the "Order of Suspension" established in the Definitive Table of Distribution of the Waters of the River Jacaguas, approved by Royal Decree of June 8, 1880, a copy of which is hereto annexed marked Schedule D.

The People of Porto Rico shall have the right to divert from the reservoir behind the Guayabal dam into the Juana Diaz Canal, or any other canals of the Irrigation System, the amount of water flowing into the reservoir from the Toro Negro River or from any other sources than the Jacaguas River, whether or not there is any storage water in the Guayabal Reservoir; and it is further understood and agreed by and between the parties that, as far as the Fortuna Estates is concerned, The People of Porto Rico may divert all the waters of the Jacaguas River, after providing for the de-

livery to the Fortuna Estates of the waters to which it is entitled, as specified in this agreement, into the Juana Díaz Canal or any other canals, ditches or reservoirs of the Irrigation System.

It is understood and agreed that the expression "storage water" does not include water in the said reservoir not rising to a height more than three feet above the bottom of the outlet gates to the Juana Diaz Canal.

Seventh. In the event that, for any cause, whether within or beyond the control of The People of Porto Rico (except in the case hereinbefore provided for), the delivery of water to the Fortuna Estates at any point shall be temporarily, partly or wholly interrupted, The People of Porto Rico shall, during the continuance of such cause, deliver an equivalent amount of water to the Fortuna Estates at some other point in the irrigation canals of Fortuna Estates to be selected by the Irrigation Service.

Eighth. In the event that the Fortuna Estates, its successors or assigns, shall at any time determine that it is to its or their best interest to discontinue the use of the storage reservoir constructed upon the Estates Cristina and Luciana, the waters to be delivered into such reservoirs, as hereinabove agreed, shall be delivered either into the present intakes in the Jacaguas River appurtenant to the lands in question or at such other point or points upon or adjacent to said lands as the Fortuna Estates, its successors, or assigns, shall determine: Provided, however, that such delivery at places other than said present intakes shall be made without loss of water to The People of Porto Rico, and that all extra expenses occasioned by such delivery shall be borne by the Fortuna Estates, its successors or assigns.

Ninth. The People of Porto Rico consents that, to the extent that the owners or users of valid and subsisting water rights may not be prejudiced, the Fortuna Estates may apply the water deliverable hereunder or any part of it to the irrigation of any of the lands hereinbefore described or any parts or portions thereof.

Tenth: It is further specifically understood and agreed by and between the parties hereto that any temporary or other arrange-

ment or agreement made between the said Fortuna Estates, its successors, lessees or assigns, or any official or representative thereof and any official of the Government of Porto Rico with respect to the taking and use of waters from the River Jacaguas, the measurement of such waters, the building of reservoirs, canals, siphons and pipe lines, the diversion of waters from one tract of land to another, the time during which waters shall be delivered from time to time, the amount of water to be delivered at any point or points at any time or times the purchase of surplus water from time to time, or any other matters connected with the use of the said waters of the Jacaguas River, and the irrigation therewith of the lands owned, leased and cultivated by the Fortuna Estates, its successors or assigns, shall at all times and for all purposes be deemed to be subject to the terms and provisions of this agreement, and shall not affect or modify the same or be deemed or considered so to do or to affect or prejudice the rights of either party hereunder.

Eleventh: It is agreed by both parties that the delivery to and the use by the Fortuna Estates of water in accordance with the terms and conditions expressed in this agreement shall not in any event affect or modify the present existing status of the water rights and concessions claimed by the said Fortuna Estates; but that such delivery and use is to be made in view of the modified physical conditions resulting in the bed of the River Jacaguas from the establishment of the public irrigation service, which on the one hand henceforth permit the delivery to and the use by the Fortuna Estates of a substantially uniform flow of water, as provided in this agreement, and on the other modifies to some extent the use of the water heretofore made by the Fortuna Estates; that such delivery and use shall continue as long as such modified conditions continue to exist, and in the event of the total or partial destruction of the Guayabal Dam, or of the main canal known as the Juana Diaz Canal, connected therewith, from any cause whatsoever, and the resulting inability of The People of Porto Rico to comply with the terms of this agreement, the Fortuna

Estates may forthwith exercise such rights as it has under the said concessions and grants, but as soon as The People of Puerto Rico shall have reestablished or reconstructed the works so destroyed in substantially the same form as at present constructed, or in such a manner as to enable it to perform substantially the terms of this agreement, this agreement shall be revived and in full force and effect from such time.

Twelfth. Neither the execution of this agreement by the Fortuna Estates nor the acceptance and use of water delivered to it as herein provided, nor any consent, waiver or permission given or held to be given hereby or hereunder, nor any failure on the part of the Fortuna Estates, acting in accordance with this agreement to take and use water in accordance with the exact terms of its said concessions and water rights, or any of them, nor anything done or suffered by said Fortuna Estates hereunder or in accordance with the terms hereof or pursuant to the provisions herein contained, shall at any time or for any purpose be deemed to affect, modify or change to any extent the status of the said water rights and concessions claimed by the Fortuna Estates as existing at the time this agreement was entered into, or to limit or prejudice any rights or privileges which the Fortuna Estates, ~~its successors~~ or assigns, may have under or by virtue of the said concessions, and the grants and decrees respecting the same hereinabove described, or by virtue of the use of the said water of said Jacaguas River, heretofore made by it and its predecessors in title.

Thirteenth. In the event of the permanent abandonment by The People of Porto Rico of said irrigation system utilizing the waters of the Jacaguas River, or in the event that The People of Porto Rico or the Official or Official Body in charge of the irrigation service shall be enjoined or restrained by final order or decree of any court of competent jurisdiction from carrying out the provisions of this agreement, then this agreement shall become null and of no force and the Fortuna Estates shall be entitled to the exercise of any and all rights which it had at the time this agree-

ment was entered into as if this agreement had never been entered into or performed in whole or in part by either party hereto; and in the event that The People of Puerto Rico or the Official or Official Body in charge of the irrigation service shall, without reasonable cause, fail or refuse to deliver water to the Fortuna Estates, its successors or assigns, substantially as herein agreed, then and in any such event, and for so long as said failure or refusal shall continue, the Fortuna Estates shall be entitled to the exercise of any and all the rights which it had at the time this agreement was entered into as if this agreement had never been entered into or performed in whole or in part by either party hereto.

Fourteenth. Nothing in this agreement contained shall be taken to impair or abridge such right as The People of Porto Rico may have to modify, enlarge or improve any of the works or structures of the Irrigation System, or to add other works or structure thereto.

Fifteenth. This agreement shall apply to, benefit and bind the successors, lessees and assigns of the parties hereto to the same extent that it applies, benefits and binds such parties.

Sixteenth. The party of the first part hereby agrees that upon the request of the party of the second part, the party of the first part or the officer or official who may at the time be discharging the functions of the Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, will execute a public document embodying this agreement in conjunction with the party of the second part, and the party of the second part hereby agrees that it will execute, upon the request of any Commissioner of the Interior of Porto Rico, duly appointed and acting as such, or in case the office of Commissioner of the Interior shall be abolished by Act of Congress, then and in such event upon the request of the officer or official duly appointed under an Act of Congress to perform the duties and functions now performed by the Commissioner of the Interior, a public document embodying this agreement, and each party hereby agrees that it will cooperate with the other in taking all steps necessary

to have this agreement or the public document embodying the same duly recorded in the proper Registry of Property and will execute or cause to be executed such documents and papers as may be necessary or proper to this end; and it is further specifically agreed that failure on the part of either party to comply with the provisions of this clause Sixteenth shall constitute a total breach of this agreement and that the other party hereto, unless such breach be waived by it, shall thereupon be entitled to the exercise of any or all of the rights it had at the time this agreement was entered into, as if this agreement had never been entered into or performed in whole or in part by either party hereto.

In witness whereof The People of Porto Rico have caused these presents to be signed by the Acting Commissioner of the Interior, acting in representation and on behalf of The People of Porto Rico, and Fortuna Estates has caused these presents to be signed by its attorney in fact, Julius Umbach, all on the day and year first hereinabove written.

E. S. WHEELER,

Acting Commissioner of the Interior.

JUL. UMBACH,

Attorney in fact of Fortuna Estates.

F. MANUEL TORO.

Witness: M. Lozano.

Island of Porto Rico

City of Ponce, ss., Affidavit No. 400.

On this twenty-sixth day of August, 1914, before me, a notary public, personally came and appeared Julius Umbach, of age, merchant, a resident of the City of Ponce, to me personally known, and acknowledged that he signed the foregoing instrument as attorney in fact of Fortuna Estates.

F. MANUEL TORO,

Notary Public.

Island of Porto Rico

City of San Juan,

Notaria de Monserrat. Affidavit No. 1397.

On this twenty-eighth day of August, 1914, before me, a notary public, personally came and appeared Ernest S. Wheeler, of age, married, Acting Commissioner of the Interior, a resident of the City of San Juan, to me personally known, and acknowledged that he executed the foregoing instrument in representation and on behalf of The People of Porto Rico.

DAMIAN MONSERRAT,

Notary Public.

"SCHEDULE A"

Names of the Property	Dates of Irrigation Concessions	Dates of Royal Decrees
Luciana	December 23, 1848	June 8, 1880.
Cristina	March 17, 1852	June 8, 1880.
Fortuna	October 5, 1846	June 8, 1880.
Serrano	September 26, 1845	June 8, 1880.

"SCHEDULE B"

Names of the Properties	Dates of Concessions	Torrential width of intakes	Royal Decrees
Luciana	September 1, 1878	1 meter	June 8, 1880
Fortuna	January 10, 1879	1 meter	June 8, 1880
Serrano	November 21, 1878	1 meter	June 8, 1880

J. U.

At the termination of the above contract and Schedule "A" and "B" there also appears another schedule marked "D" referring to certain water distribution, and also Schedule "C" which is a blue print and if being impracticable to copy these two last mentioned documents in this instrument, the originals thereof are hereto annexed and made a part hereof and are herein protocolized and made a part of this document, from which copies should be issued hereafter.

The appearing party, Manuel V. Domènech, in representation

of and on behalf of The People of Porto Rico, and the appearing party Julius Umbach, in representation of and on behalf of the Fortuna Estates, declare and agree that the private contract hereinabove referred to, copied and inserted, is nor [*sic*] and shall continued [*sic*] in full force and effect and that the said contract and all provisions thereof are and shall continue to be binding upon their respective principals represented by them in this proceedings, and they hereby on behalf of their said principals respectively accept, ratify and confirm the said private contract and each and every clause and provision thereof; and in compliance with the agreement therein contained to embody said private contract in a public instrument they now do so by these presents and desire that embodying of the same herein shall have the same legal effect and the same force as if the same had been executed in a public instrument in the first instances.

Such is the public instrument executed by the appearing parties, which they execute, accept and sign before the undersigned notary public and in presence of the witnesses Francis E. Neagle and Enrique Castro, who are residents of this city and competent to be such, and who are personally known to me, and I, the notary, hereby certify to all of the statements herein set forth:

Francis E. Neagle,
Enrique Castro Gonzalez.

MANUEL V. DOMENECH,
JUL UMBACH,
FRANK ANTONSANTI.

I hereby certify that the foregoing is a true and correct copy of the above contract executed by the parties therein on the date therein expressed, the original thereof remaining in my protocol and bears number twenty.

In witness whereof, and for the purpose of delivery to the Fortuna Estates, I issue this copy on the same day, month and year of its execution. Interlineation—to—quantities—or to be adopted,—are noted.

FRANK ANTONSANTI

(Internal Revenue Stamp)

DEFINITE CHART SHOWING THE DISTRIBUTION OF THE WATERS OF THE JACAGUAS RIVER, ISLAND OF PUERTO RICO

Name of the Estates	Date of the Irrigation Concessions	Total superficial area of the estates Cuerdas	Hectares	Lands entitled to irrigation Hectares	Coefficient adopted per hectare and seconds	Liters of water per second	Order Number for the Suspension of the Irrigation Service
Fountain in the town of Juana Díaz						4.00	13
Luciana	December 23, 1848	619.73	243.68	117.91	0.70	82.54	5
Cristina	March 17, 1862	784.00	308.14	152.49	0.70	106.74	4
Fortuna	May 8, 1841	794.00	312.07	199.64	0.70	139.75	12
Potela	October 5, 1846				0.70	157.09	8
	April 25, 1846	1,785.00	701.57	224.42			
Amelia	June 21, 1859	1,378.77	541.91	294.00	0.70	205.80	6
Urepla	October 30, 1846						
	March 3, 1846	1,775.00	696.86	171.68	0.70	120.17	9
Unión	July 26, 1855	382.00	150.14	79.21	0.80	39.60	7
Serrano	October 2, 1846	557.60	219.15	204.93	0.50	102.47	10
	September 26, 1845			100.67	0.70	67.04	11
	May 14, 1845	878.84	345.41	125.58	0.50	133.28	3
Boca Chica	November 7, 1860					56.22	
San Fernando	March 7, 1867		75.54	75.54	0.70	52.88	1
Placeres	April 20, 1870	612.00	240.54	31.44	0.70	22.00	2
	By prescription, 1865					1166.30	

Madrid, June 8, 1880. Approved by H.M. - Sanchez Bustillo

True copy: Secretary of the General Government - Francisco Fontanals-Martinez

EXHIBIT B.

TO ANSWER.

"UNION" AND "PLACERES" CONTRACT.

Memorandum of Agreement made this twenty-sixth day of August, 1914, between Ernest S. Wheeler, Assistant Commissioner of the Interior, discharging since January 17, 1914, the duties and functions of Commissioner of the Interior of Porto Rico, now in discharge of such duties and functions and in possession of said office and acting as such Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, party of the first part, and Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, party of the second part.

Whereas, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, are the owners in fee simple of two (2) tracts of land situated in the Municipality of Ponce, in the District of Ponce, in the Island of Porto Rico, and claims as appurtenant thereto, by virtue of certain concessions, royal decrees of Kingdom of Spain and user, the right to use thereon waters from the River Jacaguas for the irrigation thereof, the said land and water rights being generally described as follows:

1. One tract known as the Estate "Union", comprising as shown on the table "Cuadro Definitivo de Distribucion de Aguas del Rio Jacaguas", of June 8th, 1880—approximately 150.14 hectares of land, with an appurtenant right to take from the River Jacaguas for the irrigation thereof, 39.60 liters of water per second, equivalent to 1,013.56 acre feet of water per year for said Estate "Union".

2. One tract known as the Estate "Placeres", comprising—as shown on the table "Cuadro Definitivo de Distribucion de Aguas del Rio Jacaguas", of June 8, 1880—approximately 240.54 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 22 liters of water per second,

equivalent to 565.75 feet of water per year for said Estate "Placeres".

And Whereas, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella and its predecessors in title have been for upwards of twenty years and are now taking waters from the river Jacaguas for irrigation of said tract of land, and claims to have been doing so under and by virtue of the said concessions and the said royal decrees of the Kingdom of Spain, granting, approving and confirming the water rights aforesaid (a partial list of said concessions and decrees being hereto annexed and marked "Schedule A"), such waters having been taken from the bed of said River Jacaguas through intakes built and established for the purpose by the predecessors in title of Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella; and

Whereas, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, also claim the right to take for the irrigation of the said two (2) tracts of land hereinabove mentioned torrential waters from the bed of the Jacaguas River during the time of high water without limit as to quantity except as limited by the size and the location of the intakes and the canals leading therefrom to the respective tracts of land aforesaid (a list of the concessions therefore, being hereto annexed and marked "Schedule B"), and that said rights for the taking and use of such torrential waters have been exercised by Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, and their predecessors in title for upwards of twenty years, and are now so exercised; and

Whereas, The People of Puerto Rico has authorized and undertaken the construction of a public irrigation system, in accordance with the Public Irrigation Law approved September 18, 1908, and the amendments thereto, and has recently, in the construction of said irrigation system, erected a dam (known as the Guayabal dam) across the bed of the said Jacaguas River above the said intakes which the said Jose A. Poventud, Isabel Cortada Vda. de

Poventud, Juan Torruella y Cortada and Sergio Torruella use for taking water for irrigating its said two tracts of land in accordance with its said claim of right; and The People of Porto Rico proposes to use the said dam for the impounding and storage of a part of the waters of the River Jacaguás and of the River Toro Negro, a stream rising on the north side of the main watershed of the Island of Porto Rico, whereby the source of supply of the waters which the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, claim to be entitled to by reason of the aforesaid concessions, royal decrees and user for the irrigation of the two tracts of land aforesaid, may be interrupted and impaired; and

Whereas, said water rights and concessions have not been relinquished or surrendered to The People of Porto Rico and said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella is unwilling to enter into any agreement or arrangement for the relinquishment or surrender of the said water rights and concessions; and

Whereas, the amount of water taken by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella and its predecessors in title for the irrigation of said two tracts of land under its said claim of water rights varies from month to month in accordance with the rainfall in the watershed of the said Jacaguas River, so that it is impossible to determine in advance the exact amount of water to which the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella are entitled under the said claimed water rights for any fixed period of time, and The People of Porto Rico (notwithstanding the construction and operation of said Guayabal Dam) is ready to deliver from the said Jacaguas River to the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella the amount of water to which the latter may be entitled under its said concessions, but in order to facilitate and make more certain the operation of the said dam and the irrigation system of which it is a

part, desired to determine and agree upon an amount of water which, delivered regularly, may, under all attending circumstances, be considered to be the fair equivalent in value for irrigation purposes of the amount of water which the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella would under ordinary circumstances take and use under the said water rights and concessions; and

Whereas, the Commissioner of the Interior is authorized and empowered, by Section 13 of the amendment to the Public Irrigation Law, approved August 8, 1913, after consulting with the Attorney General of Porto Rico as to the validity and legal status of the said water rights or concessions to enter, on behalf of The People of Porto Rico, into agreement with the owner of the said water rights or concessions, upon an amount of water equivalent to the water taken and used under said water rights and concessions and as to the time, place and conditions of delivery thereof to the lands to which the said water rights or concessions are appurtenant; and

Whereas, the Attorney General of Porto Rico has been duly consulted, as provided by said Act;

Now, therefore, in consideration of the premises and of the covenants and agreements on the part of each party hereinafter contained, the said Acting Commissioner of the Interior in representation and on behalf of The People of Puerto Rico, party of the first part, and the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, do hereby covenant and agree as follows:

First: The parties hereto hereby agree that the quantities of water specified in this paragraph, delivered uniformly throughout the year, subject to the terms and conditions specified in this agreement, together with the additional water the right to take which is provided for or reserved in paragraph third and fourth hereof, are the fair equivalent in value of the water which the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella takes under and pursuant

to the concessions and water rights claimed by it, and The People of Porto Rico will, subject to the conditions and limitations hereinafter specified and at the times, places and subject to the conditions of delivery, hereinafter provided for, make delivery to the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, for the irrigation of the said tracts of land hereinabove referred to, of the amount of water, to wit:

For the Estate "Union", 760.17 acre-feet per year,
For the Estate "Placeres", 186.38 acre-feet per year.

The waters so to be delivered shall be delivered subject to the conditions hereinbelow expressed, in substantially equal quantities from day to day, to wit:

For the Estate "Union", 2.08 acre-feet daily;
For the Estate "Placeres", 0.51 acre-feet daily.

Second. Except in the case of shortage in the reservoir behind the Guayabal Dam herein provided for, the water deliverable hereunder for the Estates Union and Placeres shall be delivered at the present intakes of the respective estates, or may at the option of the Irrigation Service be delivered at any part of the canal of the respective estates equally advantageous to the owners of the said estates.

(The water for Union to be taken by pump.)

Third. Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella are hereby granted the right, while this agreement remains in force, to take in addition to all amounts of water above specified, from the Jacaguas River, by pump, at the Union pumping station, water which may be available there for irrigation of any of the lands to the extent that such takings shall not deprive any owner or user of subsisting water rights or concessions upon the Jacaguas River of the water to which such owners or users may be entitled, either by virtue of such water rights or concession or by virtue of any agreement or agreements in regard thereto entered into or to be

entered into by them with The People of Porto Rico, provided, however, that should The People of Porto Rico at any time undertake the development and utilization of the surplus waters in this part of the Jacaguas River, this right shall be understood to be limited to a maximum usage of 1.40 second feet.

Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, shall install within sixty days after notice from the Irrigation Service and maintain at the Union Pumping Station, an appropriate measuring device for the measurement of the water taken from the river at such station, which shall, at all times, be subject to inspection by the properly accredited employees of the Irrigation Service.

Fourth. In addition to the amounts of water hereinbefore set forth, the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella hereby reserve and shall have the right to take torrential waters from the Jacaguas River through its head-gates at present existing for the use of torrential waters. Such head-gates, whenever they do not conform to the terms of the concessions, shall be reconstructed in conformity therewith, and such use of torrential waters shall be subject to such priorities in the use of torrential waters as may exist on the said Jacaguas River. The foregoing provisions, however, shall not in any way limit The People of Porto Rico from restraining all of the torrential flood waters which it may desire, and which it may be legally entitled to restrain in the reservoir above the Guayabal Dam.

To the extent that there may be waters derived through underground filtration or seepage from the River Jacaguas or its tributaries or from the reservoir maintained behind the said Guayabal Dam, which rise to or near the surface of the ground within the boundary lines of any so-called "semi-poyal" portions of any of the tracts of land owned, leased, operated or cultivated by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, its successors or assigns, or any waters derived in wells made or to be made upon any portions of

said lands, or any of them, which are not strictly subterranean waters, within the meaning of that term as used in the laws of Porto Rico and the full property of the owner or possessor of said lands, the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, its successors, lessees or assigns, while this agreement remains in force, may make use of the said waters and all portions hereof in such manner and for such purposes as it or they shall from time to time elect, without payment or responsibility to The People of Puerto Rico for or in respect thereto, except in so far as such right and the means adopted or to be adopted for its exercise may be limited, modified or restricted by the provisions of the Law of Waters.

Fifth. During ten days in each year, while this agreement is in force, The People of Puerto Rico shall deliver to said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, and the latter may take and use at its present intakes in the Jacaguas river, as indicated upon the annexed chart furnished by Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella (marked "Schedule S"), built and used for said respective tracts of land, in lieu of all quantities of water elsewhere specified in this agreement except in Section Fourth, the amount of water which said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella claims to be entitled to take for each of said two tracts of land under the said concessions and water rights, to wit:

For the Estate Union, 39.60 liters of water per second (to be taken by pump).

For the Estate Placeres, 22 liters of water per second.

The presence of water in the river bed of the Jacaguas river, at the openings of the said intakes, in quantities sufficient to permit the taking by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella of the quantities of water specified in this paragraph, shall be deemed a

delivery in accordance with this paragraph on behalf of The People of Puerto Rico.

Twenty-four hours' notice shall be given by or on behalf of the Irrigation Service, to the manager of or other person in authority upon the Union and Placeres Estates, of the proposed delivery of water to the Union and Placeres Estates in accordance with the terms of this section instead of in accordance with the other terms of this agreement.

Sixth. Whenever and as long as there is no storage water in the reservoir behind said Guayabal Dam, the People of Porto Rico shall deliver subject to the terms of this agreement, to José A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, the quantities of water herein provided for from the flow of the Jacaguas river exclusive of water added thereto from the Toro Negro river; but such delivery shall be subject to be cut off or diminished when so long as and to the extent that such flow is insufficient to supply all water deliverable to the owners or users of subsisting valid water rights or concessions having priorities for the use of the waters of the Jacaguas River, whether by virtue of such rights or concessions, by virtue of valuations made in accordance with the Public Irrigation Law, or by virtue of agreement with regard thereto entered into between such owners or users and the Commissioner of the Interior or any other person or body authorized by law to enter into such agreement, in representation of The People of Puerto Rico, in accordance with the "Order of Suspension" established in the Definitive Table of Distribution of the Water of the River Jacaguas, approved by royal decree of June 8, 1880, a copy of which is hereto annexed marked "Schedule D".

The People of Porto Rico shall have the right to divert from the reservoir behind the Guayabal Dam into the Juana Diaz Canal, or any other canals of the Irrigation System, the amount of water flowing into the reservoir from the Toro Negro River or from any other source than the Jacaguas River, whether or not there is any storage of water in the Guayabal reservoir; and it is further

understood and agreed by and between the parties that, as far as Jose A. Poventud, Isabel Cortada Vda. de Poventud; Juan Torruella Cortada and Sergio Torruella are concerned, The People of Puerto Rico may divert all the waters of the Jacaguas River, to which Jose A. Poventud, Isabel Cortada Vda. de Poventud; Juan Torruella Cortada and Sergio Torruella are not entitled as specified in this agreement, into the Juana Diaz Canal or any other canal, ditches or reservoirs of the Irrigation System.

It is understood and agreed that the expression "storage water" does not include water in the said reservoir not rising to a height more than three feet above the bottom of the outlet gates to the Juana Diaz Canal.

Seventh. In the event that, for any cause, whether within or beyond the control of The People of Porto Rico (except in the case hereinbefore provided for) the delivery of water to Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, at any point shall be temporarily partly or wholly interrupted, The People of Porto Rico shall, during the continuance of such cause, deliver an equivalent amount of water to the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella at some other proper and useful point in the irrigation canals of Union and Placeres Estates, to be selected by the Irrigation Service.

Eighth. The People of Porto Rico consents that, to the extent that the owners or users of valid and subsisting water rights may not be prejudiced, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella may apply the water deliverable hereunder or any part of it to the irrigation of any of the lands hereinbefore described, or any part or portions thereof.

Ninth. It is further specifically understood and agreed by and between the parties hereto that any temporary or other arrangement made between the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, their successors, lessees, or assigns, or representative thereof and

any official of the Government of Porto Rico with respect to the taking and use of waters from the River Jacaguas, the measurement of such waters, the building of reservoirs, canals, siphons and pipelines, the diversion of waters from one tract of land to another, the time during which waters shall be delivered from time to time, the amount of water to be delivered at any point or points at any time or times, the purchase of surplus water from time to time, or any other matters connected with the use of the said waters of the Jacaguas river, and the irrigation therewith of the lands owned, leased and cultivated by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, its successors or assigns, shall at all times and for all purposes be deemed to be subject to the terms and provisions of this agreement, and shall not affect or modify the same, or be deemed or considered so to do or to affect or prejudice the rights of either party hereunder.

Tenth. It is agreed by both parties that the delivery to and the use by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella of water in accordance with the terms and conditions expressed in this agreement shall not in any event affect or modify the present existing status of the water rights and concessions claimed by the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella; but that such delivery and use is to be made in view of the modified physical conditions resulting in the bed of the river Jacaguas from the establishment of the public irrigation system, which on the one hand will henceforth permit the delivery to and the use by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella of a substantially uniform of water as provided in this agreement, and on the other modifies to some extent the use of the water heretofore made by Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella that such delivery and use shall continue as long as such modified conditions continue to exist, and in the event of the total or par-

tial destruction of the Guayabal Dam, or of the main canal known as the Juana Diaz Canal, connected therewith, from any cause whatsoever, and the resulting inability of The People of Porto Rico to comply with the terms of this agreement, the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella may forthwith exercise and enjoy such rights as it has under the said concessions and grants, but as soon as The People of Porto Rico shall have re-established or reconstructed the works so destroyed in substantially the same form as at present constructed, or in such a manner as to enable it to perform substantially the terms of this agreement, this agreement shall be revived and be in full force and effect from such time.

Eleventh. Neither the execution of this agreement by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella nor the acceptance and use of water delivered to it as herein provided; nor any consent, waiver or permission given or held to be given hereby, or hereunder nor any failure on the part of Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, acting in accordance with this agreement, to take and use water in accordance with the exact terms of its said concessions and water rights, or any of them, nor anything done or suffered by said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella hereunder or in accordance with the terms hereof or pursuant to the provisions herein contained shall at any time or for any purpose be deemed to affect, modify or change to any extent the status of said water rights and concessions claimed by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella as existing at the time this agreement was entered into or to limit or prejudice any rights or privileges which the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella, its successors or assigns, may have under or by virtue of the said concessions, and the grants and decrees respecting the same hereinabove described, or by virtue of the use

of the said waters of said Jacaguas River heretofore made by it and its predecessors in title.

Twelfth. Nothing in this agreement contained shall be taken to impair or abridge such rights as The People of Porto Rico may have, to modify, enlarge or improve any of the works or structures thereto.

Thirteenth. This agreement shall apply to, benefit and bind the successors, lessees and assigns of the parties hereto to the same extent that it applies to, benefits and binds such parties.

Fourteenth. The party of the first part hereby agrees that upon the request of the party of the second part, the party of the first part of the officer or official who may at the time be discharging the functions of the Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, will execute a public document embodying agreement in conjunction with the party of the second part, and the party of the second part hereby agrees that it will, upon the request of any Commissioner of the Interior of Porto Rico duly appointed and acting as such, or in case the Office of the Commissioner of the Interior shall be abolished by Act of Congress, then and in such event upon request of the officer or official duly appointed under an Act of Congress to perform the duties and functions now performed by the Commissioner of the Interior, a public document embodying this agreement, and each party hereby agrees that it will cooperate with the other in taking all steps necessary to have this agreement or the public document embodying the same duly recorded in the proper Registry of Property and will execute or cause to be executed such documents and papers as may be necessary or proper to this end; and it is further specifically agreed that failure on the part of either party to comply with the provisions of this clause fourteenth shall constitute a total breach of this agreement and that the other party hereto, unless such breach be waived by it, shall thereupon be entitled to the exercise of any or all of the rights it had at the time this agreement was entered

into as if this agreement had never been entered into—or performed in whole or in part by either party hereto.

In witness whereof The People of Porto Rico have caused these presents to be signed by the Acting Commissioner of the Interior, acting in representation and on behalf of The People of Porto Rico, and the parties of the second part do for themselves sign these presents, with the consent and approval of "Fortuna Estates", through its attorney in fact Julius Umbach and as sub-lessees of "Union and Placeres", all on the day and year first hereinabove written.

Witnesses:

M. Lozano

E. S. WHEELER,

Wm. L. Aguayo

Acting Commissioner of the Interior.

JOSE A. POVENTUD

ISABEL CORTADA VDA. DE POVENTUD

JUAN TORRUELLA Y CORTADA

SERGIO TORRUELLA

Parties of the second part

JUL. UMBACH,

Attorney in fact of Fortuna Estates.

[The same title.]

MOTION.

Now comes the plaintiff by its undersigned attorneys, and respectfully states and prays:

1. That in this case The People of Puerto Rico and in its behalf Manuel V. Domenech, Treasurer of Puerto Rico, has appeared as plaintiff.

2. That the aforesaid Manuel V. Domenech, officially ceased as Treasurer of Puerto Rico, as the Governor of Puerto Rico appointed Rafael Sancho Bonet to said office and the appointment was affirmed by the Insular Senate, the said Sancho Bonet having qualified and being at present the Treasurer of Puerto Rico.

3. That for the foregoing reasons it is only proper that the

said Rafael Sancho Bonet be substituted in the place and stead of Manuel V. Domenech.

Wherefore, plaintiff prays that the corresponding order be entered by this court.

San Juan, Puerto Rico, August 21, 1935.

BENJAMIN J. HORTON, *Attorney General*,
by M. RODRIGUEZ SERRA,
Assistant Attorney General.

Copy served this twenty-first day of August, 1935.

R. CASTRO FERNANDEZ,
Attorney for the Defendant.

Motion sustained September 9, 1935.

PABLO BERGA, *Judge*.

[New title.]

STATEMENT OF THE CASE AND OPINION.

On June 24, 1930, The People of Puerto Rico brought suit before the District Court of San Juan against Russell & Co., S. en C., a limited partnership organized under the laws of Puerto Rico, to recover the sum of \$61,617.04, as taxes levied and assessed in accordance with the provisions of Act No. 49 of July 8, 1921, which tax is dedicated exclusively to cover the administrative expenses and upkeep of the irrigation system of the southern coast district of this island, averring therein that the defendant has been benefited with said system and receiving the whole volume of water agreed for certain parcels of land situated in the municipality of Juana Diaz, in conformity with a certain contract executed on August 26, 1914, between their owners, predecessors in title of the defendant, and the Commissioner of the Interior.

The defendant, through its partners Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and Frank M. Welty, on July 24, 1930, moved for a change of venue to the United States District Court for Puerto Rico and its

motion was granted by this court on the 19th of said month and year.

The case was decided against The People of Puerto Rico and the latter appealed to the United States Circuit Court of Appeals for the First Circuit, where the decision of the Federal Court was affirmed by holding that Act. No. 49 of July 8, 1921, was null and unconstitutional. *People of Puerto Rico v. Havemeyer et al.*, 60 Fed. (2d) 10. Later a writ of certiorari was obtained from the United States Supreme Court and on March 13, 1933, the judgment of the Circuit Court was reversed for the sole reason that the Federal Court had acted without jurisdiction as there was no diversity of citizenship between the parties to the suit, as Russell & Co., S. en C. is a limited civil partnership domiciled in Puerto Rico, where it was organized. *Puerto Rico v. Russell & Co.*, 288 U.S. 476. The Supreme Court of the United States did not consider the question of the constitutionality of the law under which the tax was levied.

The case having been remanded to this court, on June 8, 1934, the plaintiff presented an amended complaint with the sole object of increasing the amount claimed to, \$97,668.88, that is, \$70,332.76 as taxes, and \$27,336.12 as surcharges, said taxes corresponding to the years 1922-23 to 1933-34.

The aforesaid Act No. 49 of July 8, 1921 is entitled: "An Act fixing a tax on certain lands using water from the southern coast public irrigation system, on which lands no tax whatsoever was levied under the public irrigation law, and for other purposes." And the public irrigation act for the southern coast, approved September 18, 1908, is entitled: "An Act to provide for the construction of an irrigation system, and to provide revenues therefor; for the temporary appropriation of two hundred thousand dollars to begin such work, and for other purposes." This act was amended in 1911 and 1913.

The amended complaint alleges that the properties described therein were not and are not subject to the payment of any tax for irrigation under the provisions of the act of 1908, as amended,

and that since 1915 they have received and continued to receive the whole amount of the water stipulated for irrigation purposes by virtue of the contract of August 26, 1914. The theory of the complaint is that the defendant receives benefit from the system, inasmuch as it receives the whole amount of water stipulated for irrigation purposes, and that the lands are subject to the payment of the special tax, and that it has refused to pay the same, in spite of the numerous demands that, from time to time, the Treasurer of Puerto Rico has made of the defendant since the year 1922. Plaintiff claims that the gist of the cause of action is not the contract, but the legal obligation of the defendant, arising from the act of 1921.

In its answer the defendant admits some facts and denies others; the contracts executed for the irrigation of Fortuna, Cristina, Luciana, Serrano, Union and Placeres estates, are made a part of the answer; and the defendant alleges furthermore, as a defense, that it is in possession of said estates and that it owns certain rights of ordinary and torrential water, by virtue of certain concessions or rights from the Crown of Spain, and of certain authorization to use said lands for irrigation purposes, from the Jacaguas river, in the municipality of Juana Diaz, Puerto Rico.

As a question of law the defendant alleges that Act No. 49 of 1921, under which plaintiff claims authority to assess the tax and surcharges, is illegal, unconstitutional and void for the following reasons:

(a) Because it impairs the obligations contracted under the contracts.

(b) Because it delegates legislative powers to the Commissioner of the Interior.

(c) Because it attempts to assess a special tax over certain lands without the corresponding benefit to said lands or their owners, thus depriving the defendant of its property without due process of law.

(d) Because it attempts to confiscate property rights of the defendant, to wit: the aforesaid water rights corresponding and

forming part of said parcels, thus depriving the defendant of its property without due process of law, and condemning private property for public purposes without due compensation.

(e) Because it attempts to assess a tax on the property of the defendant solely and not over other properties in the Island of Puerto Rico, thus violating the uniformity rule contained in the Organic Act.

(f) Because it violates the Treaty between the United States and Spain, known as the Treaty of Peace, of 1898, and impairs and destroys property rights of the defendant granted by the Spanish Government.

(g) Because it attempts to assess the aforesaid tax on a limited kind of lands arbitrarily selected and without receiving any benefit, thus violating the clause which guarantees the equal protection of the laws.

(h) Because it assesses a tax without containing any provision as to notice or opportunity to be heard, and without granting the right of appeal or review.

The defendant alleges furthermore that the action has prescribed because the same was not brought until June 24, 1930, that is, two years and 2 months after Act. No. 302, of April 23, 1928, was approved by the Congress of the United States. This act simply grants a term of one year to collect, through a legal action, any tax whose collection might have been restrained through an injunction proceeding, as happened in the present case by decree of June 12, 1926.

The hearing of this case was held on September 11, 1935. Both parties appeared and the case was submitted through a stipulation of facts signed by the parties and furthermore, in so far as the plaintiff is concerned, through the testimony of Antonio Echetti and Juan Martinez Chapel, and documentary evidence consisting of certain plans and certificates in connection with the irrigation system of the southern coast.

From the pleadings of the parties, stipulation of facts, evidence adduced and laws applicable, the court finds that the defendant

partnership, Russell & Co., Sucrs., S. en C., is the absolute owner of Fortuna, Cristina, Luciana and Serrano Estates, described in the complaint, and that it is also the lessee, subject to the payment of all kind of taxes, of Union and Placeres Estates, belonging at present to Jose A. Poventud, Sergio Torruella Cortada and heirs of J. Serralles; all these parcels bound with the Jacaguas river, in the jurisdiction of Juana Diaz, Puerto Rico, the Jacaguas being a non-navigable river flowing into the Caribbean Sea. That the Crown of Spain, through royal decrees, made concessions for irrigation purposes to the owners at the time of said estates and under said concessions they were allowed to take from the Jacaguas river, the amounts of water specified in the stipulation; that for over 20 years prior to the 26th of August, 1914, the said grantees and Fortuna Estates; predecessors in title of the defendant, took and used said water for the irrigation of the aforesaid estates; that the defendant on acquiring Fortuna, Cristina, Luciana and Serrano estates acquired also the aforesaid water rights and has been taking and using said water for the same purpose, and that, as an incident to the lease, the defendant is grantee of the water rights enjoyed by Union and Placeres estates; that The People of Puerto Rico, in accordance with the public irrigation act of September 18, 1908, as amended in the years 1911 and 1913, constructed the public irrigation system for the southern coast of Puerto Rico, and as part of said irrigation system it built a dam to store and accumulate part of the water of the Jacaguas river. This dam being known as Guayabal Dam, extends across the bed of said river and is situated above the intakes. that the predecessors in title of the defendant used for taking and using the water to which they were entitled, under the aforesaid concessions and royal decrees of the Crown of Spain; that the public irrigation act of September 18, 1908, provided in Section 12 the manner of acquiring the existing water rights from the Jacaguas river, by condemnation proceedings or by contracts waiving them, the owners of said rights to receive credit for their proportional share in the expenses of construction.

operation and maintenance of the irrigation system; that Act No. 128 of August 8, 1913, amended the aforesaid public irrigation act and authorized the Commissioner of the Interior to contract with the owners of the water rights in such a wise that the latter, in exchange for the water they took, received from the irrigation system an amount of water equivalent in value to that which they were entitled to receive under their respective concessions; that as Fortuna Estates, predecessor in title of the defendant, and the owners of the concessions existing in favor of Union and Placeres estates; refused to waive, abandon or relinquish their respective rights and it was decided not to condemn said lands, then The People of Puerto Rico entered into negotiations with the grantees and the contracts of August 26, 1914 were then entered into. These contracts were embodied into a public deed, on June 8, 1915, which deed forms part of the amended answer (Exhibits A and B). These contracts determined the equivalent in value of the water rights corresponding to each of the estates and stipulated furthermore the form, manner and daily amount of water that the irrigation system was bound to supply to each of said estates; that since the year 1915 to the present, the irrigation system of the southern coast, has been, in conformity with the contracts, supplying and delivering for the irrigation of said Fortuna; Cristina, Luciana, Serrano, Union and Placeres estates the amount of water stipulated. That Act No. 49, of July 8, 1921, fixed a special tax on the parcels of land receiving water from the public irrigation system of the southern coast, to which the public irrigation act levied no tax. Among these lands were the estates of which the defendant is in possession, either as owner or lessee; and that in conformity with the said act the Treasurer of Puerto Rico levied and assessed on the aforesaid parcels of land or estates, as special tax for the years 1922-23, to 1933-34, both inclusive, the sum of \$70,332.76, which sum has not been paid, and for the recovery of which, plus surcharges amounting to \$27,336.12, the present action has been brought.

The stipulation also states as a fact shown that the complaint

in case No. 1250, entitled Horace Havemeyer et als. v. Juan G. Gallardo, Treasurer of Puerto Rico, *in re* injunction, filed in the District Court of the United States for Puerto Rico, after a trial on the merits of the case, a final decree was entered granting an injunction to restrain the assessment and collection of the tax under Act No. 49 of July 8, 1921; and that said final decree was appealed to the United States Circuit Court of Appeals for the First Circuit, and that while the appeal was pending on March 4, 1927, the Congress of the United States approved an act to amend the Organic Act of Puerto Rico, which abated the said appeal and dissolved the writ of injunction.

The testimony of Antonio Luchetti, chief engineer of the Irrigation Service, tended to show that the defendant has received benefits from the irrigation system and as a result of the contracts entered into with The People of Puerto Rico, the said benefits being that when the aforesaid estates by virtue of the concessions and rights granted by the Crown of Spain enjoyed the right to take water for irrigation purposes; in times of draught, they did not receive the total amount of water to which they were entitled, as there was not enough; and furthermore because during the rainy season the torrential water flooded the lands to the prejudice of the agriculture and the water was lost in the sea without benefit to any one, while at present the irrigation system, with its wonderful dam at Guayabal Lake and with the construction of pools at Toro Negro and Matrullas river, permits the storage of water and the estates receive the total amount of water stipulated in the contracts but not a single additional drop. And the testimony of Juan Martínez Chapel, appraiser of corporations and officer in charge of irrigation matters in the Treasury Department, tended to show the form and manner in which the rate of the special tax for irrigation is reached for those who do not pay the other tax fixed by the irrigation act. This procedure is as follows: The Commissioner of the Interior figures the amount necessary to cover the cost of maintenance and conservation of the irrigation system for the next fiscal year,

deducting therefrom the amount corresponding to the hydroelectric system and deducting the amount estimated by said Commissioner as income for said year from the sale of water. A surplus is credited or a deficit added to the budget of the following year. The resulting total is divided by the total number of acres, in order to determine the rate of the annual tax per acre. The blanks used every year by the Treasury Department for the classification of the tax and to demand from the owners of the land the payment of same, were also presented in evidence. Mr. Martinez Chapel testified that he was the officer who fixed the rate of tax to be paid by each parcel of land, in accordance with the estimates made by the Commissioner of the Interior.

Section 2 of Act No. 49, of July 8, 1921, impeached herein, provides the form and manner in which the tax is to be fixed, and reads as follows:

"That the tax to be levied on each tract of land receiving water from the irrigation system, but which under the law in force does not contribute towards defraying the cost of such system, shall be classified as follows: The Treasurer of Puerto Rico shall have charge of fixing the total number of acres receiving water from the irrigation system which includes: (1) tracts of lands subject to taxation pursuant to the provisions of the public irrigation law and amendments thereto, for the purpose of reimbursing the cost of the irrigation works; (2) tracts of land to which the Irrigation Commission acknowledged the right to the use of water or to which such right was acknowledged by the courts in cases of appeal, as rights acquired under the law for the use of water under prior concessions; (3) tracts of land irrigated with water delivered in accordance with acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or because of decisions of the Irrigation Commission, is delivered in whole or in part and is measured at the canals of the Irrigation Service system,

and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or shall have been fixed by the Commissioner of the Interior, by the Irrigation Commissioner or by decision of the courts, by four,—that is to say, by the number of acre-feet per year established by the Public Irrigation Law as a normal rate for delivery per acre for the formation of the irrigation district; (4) parcels of land irrigated by water supplied because of acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or under decisions of the Irrigation Commission, is taken and measured in the rivers at the points of intake indicated in the said concessions; and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or as shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts in cases of appeal, by five. The Treasurer of Puerto Rico shall then take amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operations and maintenance of the irrigation system during the following fiscal year (as provided under Section 11 of Act 128, approved August 8, 1913, which amends the Irrigation Law approved September 18, 1908), and shall add thereto or subtract therefrom, as the case may be, any resulting deficit between or surplus over, the amount expended and certified to as expended by the Commissioner of the Interior for expenses of operation and maintenance of the irrigation system during the preceding fiscal year, and the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation and maintenance of the irrigation system during the aforesaid preceding fiscal year. The Treasurer shall then divide the amount so determined by the total number of acres computed as hereinbe-

fore provided, and the result shall be and shall constitute the tax per acre which shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system.

"This tax shall be levied and collected by the Treasurer of Puerto Rico at the same time as any other tax imposed by the Public Irrigation Law, and the moneys collected shall be covered into the Insular Treasury to the credit of a special trust fund known as the 'Irrigation Fund', to be invested in the same manner and for the same purposes provided by the Public Irrigation Law and laws amendatory thereof."

In its brief plaintiff calls attention to the fact that the defendant did not present in evidence, as was to be expected, the title of the concessions or water grants made to its predecessors in interest by the Government of Spain, so as to know the exact terms of each concession. The defendant answers that it abides by the acknowledgment made of said concessions or water rights in 1914 by The People of Puerto Rico, through the Commissioner of the Interior, in the contracts attached to the answer, the existence of said rights being furthermore accepted in the stipulation of facts, wherein are specified the amount of water to be received by the various parcels and inasmuch as that is not adverse evidence voluntarily suppressed, the failure to present the said concessions proves nothing against the defendant. It appears that the amount of acre-feet of water per year, stipulated in the contract, was the equivalent in value of the whole grants and concessions that were not waived in favor of The People of Puerto Rico. It is true, as appears from the testimony of Mr. Luchetti, that the defendant is greatly benefited by the irrigation system, as it receives at all times the amount of water stipulated in the contract, but this does not justify the assessment of the special tax, while said contracts are in force and the same have not been

waived, abandoned or delivered, or as long as the water rights granted by the Crown of Spain have not been condemned.

As regards the unconstitutionality of the act in question, the United States Circuit Court of Appeals for the First Circuit held briefly that an act which fixes a special tax on lands that receive water from an irrigation system, is null and void, as it impairs the obligation of the contract with regard to the delivery of an amount of water equivalent to the value of the water rights formerly enjoyed by the owner; and that an act which provides that the Treasurer of Puerto Rico shall take an estimate prepared by the Commissioner of the Interior for determining the rate of a special tax on lands which receive water from the public irrigation system, is null and void as it delegates legislative powers to said Commissioner, 60 Fed. (2d) 10. It is true that the decision on the merits of the case was reversed in so far as the change of venue of the case was concerned, the pronouncements with regard to the unconstitutionality of the act thus remaining without any force or effect, but the reasoning of said decision still has some persuasive force, as held by the Supreme Court of Puerto Rico, in *Russell & Co. v. Domenech, Treasurer*, 48 P.R.R. —. Such is the unanimous opinion of the learned justices of the Circuit Court, which we apply now, as the same has been sustained by the case cited, and specially by that of *People of Puerto Rico v. Russell & Co.*, 268 F. 723, wherefore the validity of the contracts of August 26, 1914 was acknowledged.

After setting forth the above statements, it is unnecessary to consider the question as to whether the action is barred by prescription or not, because it was brought two years and two months after Act No. 302, of the Congress of the United States, approved April 23, 1928, became effective, and said Act simply grants a term of one year. Nevertheless, we will state that if Act No. 49 of the Legislature of Puerto Rico, of July 8, 1921, is valid and constitutional, Act No. 302, *supra*, would be applicable solely to the taxes whose collection have been prevented through an injunction proceeding that was pending on March 4, 1927, when

the act amending Section 48 of the Organic Act was approved, but not to the taxes assessed subsequently, the amended complaint herein claiming taxes for the years 1922-23 to 1933-34, both inclusive.

For the above-stated reasons, the complaint is dismissed, without special pronouncement of costs.

San Juan, Puerto Rico, November 25, 1935.

PABLO BERGA,

District Judge.

[The same title.]

JUDGMENT.

For the reasons stated in the statement of facts and opinion rendered on this date, and attached to the record of this case, as part of this judgment, the court overrules the complaint, without special pronouncement of costs.

San Juan, Puerto Rico, November 25, 1935.

PABLO BERGA,

District Judge.

Attest: J. FIGUEROA, *Clerk.*

[The same title.]

SERVICE OF JUDGMENT.

To the Honorable Attorney General of Puerto Rico, San Juan, Puerto Rico.

The undersigned clerk hereby notifies you that the court of this district has rendered judgment herein, dated November 25, 1935, which was duly recorded in the corresponding registry, as appears in the record of this case, where you may find in detail the terms of said judgment.

And as you are or represent the party aggrieved by said judgment, from which an appeal may be taken, I am addressing you this written notice and have filed a copy thereof, in accordance

with Section 2 of an Act to amend Sections 92, 123, 227 and 229 of the Code of Civil Procedure, approved March 9, 1911.

San Juan, Puerto Rico, November 29, 1935.

J. FIGUEROA,

Clerk of the District Court of San Juan, P. R.

[The same title.]

NOTICE OF APPEAL.

To RAFAEL CASTRO FERNANDEZ, *as attorney for the defendant,*
and to JUAN FIGUEROA, *clerk of this court, civil section:*

Gentlemen: Please take notice that the plaintiff herein, The People of Puerto Rico, feeling aggrieved by the judgment rendered by this Honorable court, on November 25, 1935, and served on this party the 29th of said month and year, appeals from same, in its entirety, to the Honorable Supreme Court of Puerto Rico.

San Juan, Puerto Rico, December 26, 1935.

B. FERNANDEZ GARCIA, *Attorney General,*
by R. CORDOVES ARANA,
Assistant Attorney General.

Copy served this 26th day of December, 1935.)

R. CASTRO FERNANDEZ,
by JOSE LOPEZ BARALT,
Attorney for the Defendant.

[The same title.]

MOTION FOR AN ORDER ADDRESSED TO THE
REPORTING STENOGRAPHER.

Now comes the plaintiff, by the Attorney General of Puerto Rico, and by the Assistant Attorney General, and respectfully states and prays:

1. That the plaintiff feeling aggrieved by the Judgment rendered herein has served and filed on December 26, 1935, with the

Order.

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clerk of this court, a notice of appeal to the Supreme Court of Puerto Rico.

2. That in conformity with Act No. 27 of November 27, 1917, plaintiff wishes to substitute the bill of exceptions and the statement of the case by a transcript of the evidence prepared by the stenographer of this court, wherein all the documentary evidence and the oral testimony of both parties, as well as the objections and exceptions taken and the orders of the court, be made to appear.

Wherefore, plaintiff respectfully prays that an order be entered addressed to the reporting stenographer of this court, commanding him to make a true and exact transcript of the stenographic record of the trial, as set forth in the above paragraph.

San Juan, Puerto Rico, January 3, 1936.

B. FERNANDEZ GARCIA, *Attorney General*,
by R. CORDOVES ARANA,
Assistant Attorney General.

[The same title.]

ORDER.

Considering the motion of the plaintiff requesting a transcript of the evidence in this case, the court sustains the same and orders Juan Morales, the stenographer who took the evidence in this case, to prepare the aforesaid transcript, a term of 20 days, counted from the date this order is served on him, being granted.

Given in San Juan, Puerto Rico, this seventh day of January, 1936.

PABLO BERGA,
District Judge.

Copy served this day of January, 1936.

Stenographer, District Court.

[The same title.]

ORDER.

Let the transcript of evidence of this case be considered as filed, and December 4, 1936, at 9 A.M., is set to hear the parties with regard to the approval of said transcript.

San Juan, P. R., November 27, 1936.

PABLO BERGA,
District Judge.

The parties were notified of the above order, this twenty-seventh day of November, 1936.

J. FIGUEROA, *Clerk.*

[The same title.]

AMENDMENTS TO THE TRANSCRIPT OF THE
EVIDENCE.

Now comes the defendant, by its undersigned attorney, and respectfully prays that the transcript of the evidence presented by the stenographer of this Honorable court, be amended as follows:

1. On page 1, of the transcript, paragraph 2:

"Plaintiff: We beg to inform the court that the parties have subscribed a stipulation of facts in this case, so that the same may substitute whatever evidence may be necessary with regard to the points contained therein, this without prejudice to the right of the plaintiff to present additional evidence in connection with some other point."

"Defendant: Correct."

2. That the stipulation of facts dated August, 1935, and approved by the court, the day of the trial be transcribed in toto.
San Juan, P. R., December 4, 1936.

R. CASTRO FERNANDEZ,
Attorney for the Defendant.

Copy served this fourth day of December, 1936.

B. FERNANDEZ GARCIA,
Attorney for the Plaintiff.

[The same title.]

ORDER.

Considering the petition of the defendant dated December 4, 1936, and as the stipulation of facts of the parties of September 11, 1935, forms part of the evidence, let the reporting stenographer transcribe the aforesaid stipulation. For this purpose the stenographer is granted a term of five days, after which the court shall approve the aforesaid transcript of the evidence.

San Juan, P. R., December 5, 1936.

PABLO BERGA,
District Judge.

Copy of the above order was served this seventh day of December, 1936.

J. FIGUEROA, *Clerk.*

[The same title.]

JUDGE'S APPROVAL OF THE TRANSCRIPT OF THE
EVIDENCE.

I, Pablo Berga, Judge of the District Court for the Judicial District of San Juan, Puerto Rico, do hereby certify:

That I presided over the hearing of this case and that the foregoing transcript of the evidence is a true and exact transcript of the evidence adduced at the trial; and I hereby approve the same for purposes of the appeal taken to the Supreme Court of Puerto Rico from the judgment rendered by this court.

San Juan, Puerto Rico, December 10, 1936.

PABLO BERGA,
District Judge.

[The same title.]

MOTION REQUESTING RECONSIDERATION OF THE
ORDER APPROVING THE TRANSCRIPT OF
THE EVIDENCE AND SUGGESTING
AMENDMENTS THERETO.

To the Honorable PABLO BERGA, Judge:

Now comes the plaintiff, by the Attorney General of Puerto Rico, and by the First Assistant Attorney General, and respectfully state and pray:

1. That the transcript of the evidence in this case was approved by this Honorable court on December 10, 1936.

2. That on beginning the preparation of the transcript of the record in order to perfect the appeal, the Assistant Attorney General to which this case has now been assigned (Mr. Rodriguez Serra, former Assistant Attorney General, was in charge of this case) has noticed that Plaintiff's Exhibits 1, 2 and 3, which consist of plans, have not been included in any manner in the aforesaid transcript of the evidence, and the stenographer who prepared the same has made a remark on pages 37 and 38 which reads: "As a plan is involved, the same can not be copied herein."

3. That plaintiff is of the opinion that the aforesaid exhibits are necessary for a correct interpretation and decision of this case.

Wherefore, plaintiff prays this Honorable court:

1. That an order be entered addressed to the clerk of this court, commanding him to forward to the Supreme Court with the transcript of evidence, Plaintiff's Exhibits 1, 2 and 3.

2. That a new approval be made stating why the original of said Plaintiff's Exhibits 1, 2 and 3 are forwarded.

San Juan, Puerto Rico, December 14, 1936.

B. FERNANDEZ GARCIA, *Attorney General,*
by R. CORDOVES ARANA,
First Assistant Attorney General.

Certificate of Transcript of Record.

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Copy served this fifteenth day of December, 1936.

R. CASTRO FERNANDEZ,
Attorney for the Defendant.

[The same title.]

ORDER.

Considering plaintiff's motion, let the clerk of this court forward to the Supreme Court with the transcript of evidence, Plaintiff's Exhibits 1, 2 and 3, which being plans, cannot be copied in said transcript and the same being necessary to correctly construe and decide this case.

Let the parties be notified.

Given in San Juan, P. R., December 15, 1936.

PABLO BERGA,
District Judge.

Copy served this fifteenth day of December, 1936.

J. FIGUEROA, *Clerk.*

[The same title.]

COUNSEL'S CERTIFICATE OF THE TRANSCRIPT OF
THE RECORD.

We, R. Cordoves Arana, one of the attorneys for the plaintiff, and R. Castro Fernandez, attorney for the defendant, hereby certify:

That the foregoing judgment roll is a true and exact copy of the pleadings, orders, resolutions, opinion and judgment, service of judgment, and notice of appeal filed in the office of the clerk of the District Court for the Judicial District of San Juan, Civil Section, in the above-entitled case; that the attached transcript of evidence and Plaintiff's Exhibits 1, 2 and 3, the originals of which are attached as they consist of plans which cannot be copied, together with this judgment roll constitute the transcript of the record on appeal. And in order that the plaintiff may

perfect the appeal it has taken to the Supreme Court, we sign these presents, in San Juan, Puerto Rico, this twenty-seventh day of January, 1937.

R. CORDOVES ARANA,

One of the Attorneys for the Plaintiff.

R. CASTRO FERNANDEZ,

Attorney for the Defendant.

Copy of the above judgment roll, received this twenty-seventh day of January, 1937.

R. CASTRO FERNANDEZ,

Attorney for the Defendant.

[Title omitted.]

TRANSCRIPT OF THE EVIDENCE.

[Filed in the Supreme Court of Puerto Rico February 8, 1937.]

This case was called for trial on September 11, 1935, before the Honorable Pablo Berga. Plaintiff appeared by Mr. Rodriguez Serra, First Assistant Attorney General of Puerto Rico, and defendant by Mr. Rafael Castro Fernandez. Both parties informed the court that they were ready.

Plaintiff: I wish to call the attention of the court to the description of the properties, that is something about which there is no controversy. The description made in the complaint has been accepted by the defendant in its answer, so that the description of the properties, as the same appears in the complaint, has been accepted.

Defendant: That is all right.

Judge: The stipulation is accepted.

[The same title.]

STIPULATION OF FACTS.

Now come the parties by their undersigned attorneys and in order to avoid the production of evidence in this case, as well as for the appeal that in due course may be taken from any order, decision or judgment rendered herein, they stipulate and agree to accept as facts the following:

1. That plaintiff, The People of Puerto Rico, is a sovereign political entity created by an Act of the Congress of the United States of March 2, 1917, generally known as "Organic Act of Puerto Rico"; and that Manuel V. Domenech, was at the time this action was brought, Treasurer of Puerto Rico, duly appointed and in the possession of his office in accordance with the law, the Treasurer of Puerto Rico being at present the Honorable Rafael Sancho Bonet, who is acting as such.

2. That the defendant Russell & Co. Sucrs., S. en C., is an agricultural civil partnership, organized as a legal entity in conformity with the Civil Code of Puerto Rico, with power to sue and be sued, and that said partnership is constituted by the following persons, who organized the same with the object of engaging in the cultivation of sugar cane, to wit: Frank A. Dillingham, a citizen of the United States and resident of the State of New Jersey; Horace Havemeyer, a citizen of the United States and resident of the State of New York; Edward S. Paine, a citizen of the United States and resident of the State of New York; Edwin L. Arnold, a citizen of the United States and resident of the State of Florida; Frank M. Welty, a citizen of the United States and resident of the State of Ohio; and H. B. Orde, a citizen of Great Britain and resident of the Dominion of Canada.

3. That the defendant partnership is and has been since the year 1921 absolute and full owner of the rural properties known as Fortuna, Cristina, Luciana and Serrano estates, described in paragraph 3 of the amended complaint, properties numbers 295,

379, 403 and 309, respectively, and is at present in possession of same.

4. That Fortuna estates, predecessor in title of the defendant, was on August 26, 1914, and the defendant is at present, owner, by virtue of certain concessions and royal decrees of the Spanish Crown, or uses and prescriptions, of certain water rights in favor of said lands or estates, said water to be used in the irrigation of the aforesaid properties and the water to be taken from the Jacaguas, a non-navigable river flowing into the Caribbean Sea, the water rights corresponding to said lands or estates, being described as follows:

"1. For property known as Fortuna estate, comprising approximately 312.07 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 139.75 liters of water per second, equivalent to 3,572.910 acre-feet of water per year for said Fortuna estate.

"2. For property known as Cristina estate, comprising approximately 308.14 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 106.74 liters of water per second, equivalent to 2,728.969 acre-feet of water per year for said Cristina estate.

"3. For property known as Luciana estate, comprising approximately 243.58 hectares of land, with an appurtenant right to take from the Jacaguas River, for the irrigation thereof, 82.54 liters of water per second, equivalent to 2,111.142 acre-feet of water per year for said Luciana estate.

"4. For property known as Serrano estate, comprising approximately 219.13 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 102.47 liters of water per second, equivalent to 2,619.769 acre-feet of water per year for said Serrano estate."

(The equivalent measures above specified were determined in the contract attached to the answer, as Exhibit A.)

5. That the aforesaid Fortuna estates and its predecessor in

title, had been taking and using for over twenty years prior to August 26, 1914, whenever it was physically possible to do so, water from the Jacaguas river for the irrigation of said properties, in conformity with the aforesaid concessions, royal decrees or uses and prescriptions, up to the amounts specified in the preceding paragraph, when obtainable from the river, independent from and excluding torrential water, said water having been taken from the river bed through intakes constructed for that purpose by the predecessors in title of the defendant.

6. That the aforesaid Fortuna estates, predecessor in title of the defendant, was on August 26, 1914, and the defendant is at present, owner, by virtue of certain concessions and royal decrees of the Spanish Crown, or uses and prescriptions, of the right to take and use for irrigating one or more of the aforementioned properties, the torrential water of the above Jacaguas river; and that the aforesaid Fortuna estates, and its predecessor in title for over twenty years prior to August 26, 1914, took and used for the irrigation of said properties torrential waters from the bed of the Jacaguas river in times of flood, without limitation whatsoever as to the amount of water obtainable from the river, with the exception of the limitation fixed by the size and situation of the torrential intakes and of the canals leading from the intakes, to the aforesaid properties, under the authority and by virtue of said concessions, royal decrees, uses and prescriptions.

7. That The People of Puerto Rico authorized and constructed a public irrigation system by virtue of the public irrigation act approved September 18, 1908, as the same has been amended; and that as part of the construction of said irrigation system it has built a dam to store and accumulate part of the waters of the Jacaguas river, which dam is known as Guayabal Dam; extends across the bed of the Jacaguas river, and is situated above the intakes that the predecessor in title of the defendant used for taking and using water for the irrigation of the aforesaid properties, as well as for the irrigation of Unión and Placeres estates, to be hereinafter mentioned.

8. That prior to the 26th of August, 1914, The People of Puerto Rico through its Commissioner of the Interior and in conformity with the provisions of the aforesaid public irrigation act, requested from the predecessor in title of the defendant, to waive, abandon and hand their right to take and use, both the ordinary and the torrential water from the Jacaguas river for irrigation purposes, acquired by virtue of said concessions, royal decrees or uses and prescriptions in favor of the four parcels above specified and known as Fortuna, Cristina, Luciana and Serrano estates, and that said predecessor refused to waive, abandon or hand the aforesaid rights.

9. That Fortuna estates, nearest predecessor in title of the defendant, signed on August 26, 1914, a contract with Ernest S. Wheeler, the then Assistant Commissioner of the Interior, who at the time acted as Commissioner of the Interior of Puerto Rico and discharged duties as such, and who then acted in behalf of The People of Puerto Rico. Said contract was drawn into a public deed and protocolled on June 8, 1915, by the aforesaid Fortuna estates and Manuel V. Domenech, the Commissioner of the Interior at the time, copy of said contract having been attached to the answer presented to the amended complaint herein, as Exhibit A. This exhibit is added by reference to this stipulation.

10. That in the year 1917, Fortuna Estates sold, ceded and transferred to the defendant, the four properties described in paragraph 3 of the amended complaint, that is, Cristina, Fortuna, Luciana and Serrano estates, with the rights, benefits and privileges acquired by said properties under the concessions, royal decrees or uses and prescriptions specified in paragraphs, 3, 4, 5 and 6 of this stipulation, or acquired in some other manner, as well as all right, title and interest in the contract marked "Exhibit A" to which reference has been made above, and also of all the water to which they were entitled under the terms of said contract.

11. That Jose A. Poventud, Sergio Torruella Cortada and his

of J. Serralles are, and their predecessors in title were, at all times subsequent to the year 1921, absolute and full owners of two parcels of land situated in the municipality of Juana Diaz, P. R., known as Union and Placeres estates, described under paragraph III of the amended complaint as property No. 413, and through the defendant as sublessee thereof, are and have at all times been in possession of said properties.

12. That Jose A. Poventud, Sergio Torruella Cortada and the predecessors in title of heirs of J. Serralles, were on August 26, 1914, and the aforesaid Jose A. Poventud, Sergio Torruella Cortada and heirs of J. Serralles, are at present, by virtue of certain concessions and royal decrees of the Spanish Crown, or uses and prescriptions, owners of certain concessions entitling them to take from the Jacaguas river water for the irrigation of said parcels, the Jacaguas being a non-navigable river flowing into the Caribbean Sea. Said parcels and their corresponding water rights are described as follows:

"1. Piece of property known as Union Estate, comprising approximately 150.14 hectares of land, with an appurtenant right to take from the River Jacaguas for the irrigation thereof, 39.60 liters of water per second, equivalent to 1,015.56 acre-feet of water per year for said farm.

"2. Piece of property known as Placeres Estate, comprising approximately 240.54 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 22 liters of water per second, equivalent to 565.75 acre-feet of water per year for said farm."

(The equivalent measures specified above were determined in the contract attached to the answer as Exhibit B.)

13. That prior to the year 1914, the owners at the time of said two parcels of land leased them for a number of years to the predecessors in title of the defendant, and as an incident to said lease, they ceded to the predecessors in title of the defendant, all the rights acquired under the aforesaid concessions, royal decrees,

uses and prescriptions, or contract, to take water for the irrigation of said lands; that under the terms of said lease the lessee, that is the defendant, is bound to pay all sort of taxes assessed on said lands.

14. That the owners of the aforesaid two parcels and their predecessors in interest, as well as the predecessors in title of the defendant, as lessees, have been for over 20 years prior to August 26, 1914, taking and using whenever that was materially possible, the waters obtainable from the Jacaguas river for the irrigation of said parcels, by virtue of the above concessions, royal decrees, uses and prescriptions.

15. That the aforesaid Jose A. Poventud, Sergio Torruellas Cortada and the predecessors in title of heirs of J. Serralles, were on August 26, 1914, and the above Jose A. Poventud, Sergio Torruella Cortada, and heirs of J. Serralles, are at present owners, by virtue of certain concessions, royal decrees or uses and prescriptions, of the right to take and use torrential waters from the Jacaguas river for the irrigation of the aforesaid Union and Placeres Estates; and that the said Jose A. Poventud, and Sergio Torruella Cortada, and the predecessors in title of the heirs of J. Serralles, through the defendant and the predecessors in title of the latter as lessees for over 20 years prior to August 26, 1914, have been taking and using for the irrigation of said estates, torrential waters from the bed of the Jacaguas river at times of floods, without limitation as to the amount of water available in the river and with the sole limitation imposed by the size and the situation of the torrential intakes and of the canals leading from the intakes to the respective parcels, all of this in conformity with the aforesaid concessions, royal decrees, or uses and prescriptions.

16. That prior to the 26th of August, 1914, The People of Puerto Rico, through its then Commissioner of the Interior and in accordance with the provisions of the aforesaid public irrigation act, invited the predecessors in interest of the said Jose A. Poventud, Sergio Torruella Cortada and heirs of J. Serralles, as

well as the predecessor in title of the defendant, as lessees, to waive and abandon their respective rights to take and use from the Jacaguas river, both ordinary and torrential water for the irrigation of the two aforesaid parcels known as Union and Placeres estates, by virtue of said concessions, royal decrees or uses and prescriptions, with the object of determining the amount of water to be supplied by the Insular Irrigation System, as an equivalent, but they all refused to waive, abandon or deliver said rights.

17. That the aforesaid José A. Poventud and Isabel Cortada, widow of Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, predecessors in title of the present owner, and the lessee Fortuna estates, predecessor in title of the defendant, as lessee, on or about the 26th of August, 1914, signed a contract with Ernest A. Wheeler, the then Assistant Commissioner of the Interior of Puerto Rico, acting as Commissioner of the Interior and discharging the duties of said office, in behalf of The People of Puerto Rico, copy of which contract was attached to the answer filed to the amended complaint herein, as Exhibit B; this contract is incorporated by reference to this stipulation.

18. That subsequently thereto, that is, in the year 1917, Fortuna estates, as lessee of the aforesaid Union and Placeres estates, with all the water rights corresponding to said parcels, or as owner thereof, and being lessee of same for a number of years, sold, ceded and transferred to the defendant the lease it had of said Union and Placeres estates above mentioned, with all the rights, benefits, privileges and obligations that it or its lessors might have in conformity with the concessions specified in paragraphs 12 and 14 of this stipulation, or otherwise, as well as all rights and obligations under the contract above described, and all the waters to which the said lessors might be entitled by virtue of its provisions.

19. That the officers of the Government of Puerto Rico entrusted with the performance of said contracts of August 26, 1914, have performed them in their entirety, and the aforesaid

parcels generally known as Fortuna, Cristina, Luciana and Serano, and Union and Placeres estates, have received since the year 1915, and are receiving at present water for their irrigation, from the public irrigation system of the southern coast, in conformity with and under the terms of said contracts of August 26, 1914, attached to the answer filed to the amended complaint, and marked as "Exhibits A" and "B", but neither the defendant herein nor the parcels above-described, have received during said time or at any other time, or are receiving at present, from the public irrigation system of the south coast, a larger amount of water than that which the defendant, its lessors, and said parcels would be entitled to receive by virtue and under the terms of the contracts of August 26, 1914, above described.

20. That the aforesaid parcels have not been and are not at present subject to the payment of the irrigation tax levied in conformity with the provisions of an Act approved by the Legislature of Puerto Rico on September 18, 1908; entitled "An Act to provide for the construction of an irrigation system, and to provide revenues therefor; for the temporary appropriation of \$200,000 to begin such work, and for other purposes," as amended; but the aforesaid properties are subject to the payment of all other taxes on real property assessed by the People of Puerto Rico for insular or municipal properties, and all taxes levied from and after the year 1921, to the present having been paid every year at the same tax rate paid by other properties, whether the latter are within the public irrigation district of the southern coast created by the irrigation act or without, or whether the owners of said properties waived their concessions to obtain water for irrigation purposes or not.

21. That the first session of the 10th Legislature of Puerto Rico approved an act entitled "An Act fixing a tax on certain lands using water from the southern coast public irrigation system, on which lands no tax whatsoever was levied under the public irrigation law, and for other purposes", which act was approved by the Governor of Puerto Rico on July 8, 1921, and

became effective 90 days later. This act is generally known as "Act No. 49 of the year 1921".

22. That in accordance with the provisions of said Act 49 of 1921, the Treasurer of Puerto Rico has assessed and levied on the aforesaid parcels of land Nos. 295, 379, 403, 309 and 413, as special tax for the fiscal years 1922-23 to 1933-34, both inclusive, the sum of \$70,332.76, which has not been paid; and that for the recovery of said tax the Treasurer of Puerto Rico has filed the present suit, the defendant partnership being bound to pay to the plaintiff the aforesaid tax if Act No. 49 of 1921 is legal and valid; that besides the aforesaid taxes assessed by the Treasurer of Puerto Rico, the latter has demanded from the defendant, and the present action is brought to recover same, the additional sum of \$27,336.12 as surcharges due by the defendant on said unpaid taxes; that said \$27,336.12 is a correct and true computation of the surcharges that the defendant would be owing on said taxes up to the date of filing of the amended complaint, provided said taxes are valid and legal and provided also that said surcharges may be collected on taxes assessed by virtue of Act No. 49 of 1921, and remaining unpaid.

23. That the defendant in case No. 1250, entitled Horace Havemeyer et al., plaintiffs, v. Juan G. Gallardo, Treasurer of Puerto Rico, defendant, presented before the District Court of the United States for the District of Puerto Rico, obtained after a trial on the merits of the case, a final decree granting a writ of injunction prohibiting the assessment and collection from the defendant herein or on the above-described properties, of any tax, in conformity with the aforesaid Act No. 49 of 1921, approved July 8, 1921; that said final decree was appealed to the United States Circuit Court of Appeals for the First Circuit, and was pending before the said Circuit on March 4, 1927, and the same was abated and the injunction dissolved by virtue of the provisions of an Act of Congress of the United States, approved on March 4, 1927, entitled "An Act to amend and re-enact sections 3, 20, 31, 33, 38, and 48 of the Act of March 2, 1917, entitled

'An Act to provide a civil government for Porto Rico, and for other purposes, as amended by an Act approved June 7, 1924, and for the insertion of a new section in said Act between sections 5 and 6 of said Act, to be designated as '5a' of said Act." (Section 48 of the Organic Act as amended on March 4, 1927.)

24. It is expressly covenanted that this stipulation, as to the veracity of the facts stated under paragraphs 4 to 18 inclusive, shall not be considered or construed as an admission on the part of the plaintiff herein in the sense that the same are pertinent and irrelevant to the determination of the questions at issue herein.

San Juan, Puerto Rico, September 11, 1935.

B. FERNANDEZ GARCIA,

M. RODRIGUEZ SERRA,

Attorney General,

Attorney for the Plaintiff.

R. CASTRO FERNANDEZ,

Attorney for the Defendant.

Evidence for the Plaintiff.

Plaintiff: We offer in evidence a plan of the irrigation system, with a certificate from the Commissioner of the Interior and from the chief engineer of the irrigation system, showing that this is a copy of the original map drawn from the irrigation system of Puerto Rico, by the United States Geological Survey of the irrigable lands of the southern coast, extending from Ponce to Patillas.

Defendant: No objection.

Judge: Admitted. Plaintiff's Exhibit 1.

SWORN TESTIMONY OF ANTONIO LUCHETTI.

Q. 1 (by Plaintiff). Please state your name. A. Antonio Luchetti.

Q. 2. Profession? A. Engineer.

Q. 3. Do you hold a public office? A. Chief engineer of the irrigation system for the southern coast of Puerto Rico.

Q. 4. Since when? A. Since May 1, 1923.

Q. 5. And before then? A. Before that date, I held several offices in the irrigation system. My first position was as operator to the assistant engineer, in July, 1910; while the work was in process of construction—

Q. 6. Construction of what? A. Of the irrigation system.

Q. 7. In that capacity and by virtue of the offices that you have held since 1910, have you personal knowledge of the construction and operation of the Guayabal dam? A. Yes, sir.

Q. 8. Do you know how the system operates and the amount of water ordinarily flowing from the years 1910 to 1914? A. Yes, sir.

Q. 9. Besides the data appearing in the files of the irrigation system with regard to the flow of water from the Jacaguas river during those four years, did you have any opportunity to write a memorandum or report addressed to some public officer of Puerto Rico containing technical data? A. On November 12, 1925, I prepared a report for the Assistant Attorney General, Mr. Lopez Acosta, while he was in charge of this case before the Federal court. This memorandum contains a description quite complete of the situation prior to the establishment of the irrigation system and its capacity. It contains data on the hydrography of the Jacaguas river, that is during those four years, from the year 1910 to 1914, both inclusive, and also contains data as to the amount of water delivered to Fortuna estates by the irrigation system after the same was constructed, after its operation was begun, and a comparison based on official records with regard to the water that the grantees might enjoy and those actually delivered, that is, the water received prior to the date in which the operation of the irrigation system was begun and those delivered 4½ years after the operation of the system began.

Plaintiff: To save time we might stipulate that this memorandum or report be presented to the court. If counsel for the opposite party wishes to read it, a 5 or 10-minute recess may be declared by the court.

Defendant: I wish to ask a question. Mr. Luchetti, does this report contain—

Plaintiff: I think that all opinions, as to something which is not a fact should be discarded; the personal opinion of Mr. Luchetti, on things which are not purely technical or observations made by him in his official capacity.

Defendant: All right, accepted.

Q. 10 (by Defendant). Does this report show anywhere that Russell & Co. has received a quantity of water greater than that which it was entitled to receive by virtue of the contract entered into with the Commissioner of the Interior, and marked "Plaintiff's Exhibit A"? A. According to law and in conformity with the obligations contracted by us, we cannot and should not deliver any amount of water in excess of the maximum fixed by the contract. It may be noticed that the report or memorandum clearly states that they received a quantity of water much greater than that they would have received during the $4\frac{1}{2}$ years immediately preceding the establishment of the irrigation system, had they depended on the prior flow of water.

Q. 11. But did they ever receive a quantity of water in excess of that which they were entitled to receive by virtue of the contract executed with The People of Puerto Rico? A. By virtue of the contract they did not receive a drop of water in excess of the amount stipulated.

Q. 12 (by Plaintiff). As chief engineer, have you any knowledge of the zone where the work was done, prior to the establishment of the irrigation system? A. I knew that zone perfectly well as I was brought up there, I spent my childhood in that neighborhood and knew perfectly well the climate in that section of the island.

Q. 13. Limiting ourselves to that knowledge. Were the rains on the banks of the Jacaguás river abundant and frequent or were there long periods of drought? A. There were droughts the same as today, lengthy ones and there were short periods of heavy and abundant rains which caused great floods, as happens today; but

the stream or flood was of little use for irrigation purposes. It was more destructive than beneficial to that zone and when irrigation was really needed, water was lacking, during the dry season, that is to say from December till May, which is the period when water for irrigation was needed. There was no water in the river during that period.

Q. 14. Do you mean to say that it is a fact that the southern part of the island is subject to lengthy droughts? A. Yes, sir.

Q. 15. And that this condition existed prior to the construction of the irrigation system? A. That is why the construction of a general irrigation system was begun, in order to utilize the greatest amount of water possible in the southern coast.

Q. 16. Did the grantees of the Jacaguas river receive the total amount of water to which they were entitled under the concession?

Defendant: I object, as immaterial and irrelevant. The concessions are subject to the contract entered into with The People of Puerto Rico. I mean to say that the concessions exist no longer, what we have today is the contract and the contract entitles them to receive a certain amount of water. Hence I think that everything referring to the condition existing at the time the concessions were in force is immaterial and irrelevant. By virtue of the contract we are entitled to determine the amount of water and we have not received a single drop in excess, as Mr. Luchetti has testified.

Plaintiff: The object is to show the benefits derived by virtue of the contract. These benefits have been denied in the answer.

Judge: The court admits the evidence.

Defendant: Exception. To avoid making an objection every time the witness testifies, we object to this set of questions, to all the evidence which tends to show that we have received benefits under the contracts.

A. Prior to that?

Q. 17. Prior to the construction of the dam. A. Prior to the construction of the irrigation system the concessions were subject to the eventualities of time. When there was water in the

Jacaguas river they took what they could up to the limit fixed by the concession. When there was no water in the river they had to content themselves with the amount of water they could receive under the terms of the concession, following the turns they had fixed in the distribution chart of the Jacaguas river, beginning with the oldest concessions.

Plaintiff [question addressed to the defendant]: Does that chart appear in the answer to the complaint as an exhibit?

Defendant: Yes, sir.

Q. 18. You may refer to same. A. According to the records, during the $4\frac{1}{2}$ years prior to the establishment of the irrigation system they did not receive the total amount of water which they were entitled to receive, because there was not enough water in the river.

Q. 19. Have you at hand the chart drawn as a definite one? I am referring to the statistical data showing the amount of water flowing through the river during the four years immediately preceding the construction of the system. A. According to the records of the irrigation system—

Q. 20. Were said records in your custody, Mr. Luchetti? A. They are in the files of the irrigation system. The total of acre-feet delivered by the public irrigation system of the southern coast to Fortuna, Serrano, Union, Amelia, Luciana, Cristina and Placeres estates, during the $4\frac{1}{2}$ years—January 1, 1915 to June 30, 1919—were 59,974.68 acre-feet. That was after the irrigation system was established. The total amount of water received by said properties under the Spanish concessions, during $4\frac{1}{2}$ years—January 1, 1910 to June 30, 1914—were 50,382.16 acre-feet; hence, said properties received 9,592.52 acre-feet more under the present irrigation system, during the period specified, than during a similar period immediately preceding the establishment of the irrigation system, that is, 19 per cent more in benefits in so far as the amount of water is concerned. I may add, if allowed to do so, that there was a benefit not only in the amount of water but also in the form in which the water was received. It is plain and

evident that supplying water in the amount and at the time needed is of great benefit to the landowner. The irrigation system with its dams stores the water of the floods and allows the landowner to receive daily the amount of water necessary for the cultivation of its crops. The system irrigates and transports the fertilizer. It keeps on irrigating while the plant is growing and developing. With all these elements or factors, the landowner may prepare his land beforehand, following whatever order may be necessary in order to be as successful as possible or to get the best possible crop. This is an immense benefit not only because the landowner knows the amount of water which he has; but also because he has at his disposal the irrigation system. Before that when rains were scant the streams oftentimes were of no use to the grantees, as small showers falling on the river banks were absorbed by the land without the river receiving any water, besides the fact that the torrential rains that fell during the rainy season benefited the grantees very little as the water swiftly ran down to the sea. Under the new system the water is preserved or stored for the benefit of the landowner.

Q. 21. Did Mr. Luchetti refer specially to the 4½ years immediately following the day of the contract? A. Just to make a comparison.

Q. 22. I may ask Mr. Luchetti now whether there have been some benefits or not, and if so of what nature after the first four years, that is the years following the establishment of the irrigation system of the southern coast? A. Let me submit a plan of the Toro Negro Project, showing how the Guayabal dam has developed.

Q. 23. Is that a public document? A. Yes, sir, a duplicate of official reports.

Plaintiff: I offer it in evidence in connection with the testimony of Mr. Luchetti.

Defendant: I object as irrelevant and immaterial to the case.

A. There are also some maps showing the places.

Q. 24. Is this also a duplicate document? A. A duplicate. There are two maps of each kind.

Judge: Admitted in connection with the testimony of the witness (Exhibit 2).

Defendant: We take exception.

A. After the irrigation system was begun, the water delivered increased 19 per cent over the amount delivered during the 41 $\frac{1}{2}$ years which preceded the establishment of the irrigation system. Owing to the improvements that are being made by the insular government on the river beds—not by nature but by man at the expense of the Insular Government—the benefits in the amounts of water delivered during the last four years, that is until June 30, 1935, increased to 40.11 per cent. This is due to the greater and continuous flow that the irrigation system has at present, which has diminished in the last four years by virtue of the additional work done by the Insular Government. I must state that according to the contracts and concessions under which the irrigation system makes deliveries to Fortuna estates (I mention the concessions because they are still in force and because they compelled us to deliver water to the properties mentioned in this case) no other source of supply is taken into consideration except the Jacaguas river. What I have stated, as I understand it, is that the concessions originated solely and exclusively in the river bed, without taking into consideration the improvements made by man. I could add that I have mentioned the concessions because we are operating according to the concessions. The contracts are followed only when there is enough water in the dam. When the dam has no water the concessions apply.

Q. 25. Does Mr. Luchetti remember of any occasion when there was no water at the dam? A. I could cite several instances. Before the year 1930 and almost every year, the lake dried and we operated according to the concessions. The ordinary flow of the Jacaguas river is allowed to run downstream with the object of supplying the concessions. So that the contracts are not subject entirely to the concessions.

Q. 26. Please continue to state the additional benefits received by virtue of the new development of the irrigation system. A. The irrigation system includes first the ordinary water of the Toro Negro river. This water is carried to the bed of the Jacaguas river through a tunnel situated beneath the dividing line of Juana Diaz and Ciales. This water ran from the tunnel of the Toro Negro river to the Achiote creek, which is an affluent of the Jacaguas river, and from there it flooded to Guayabal Dam. Although the contract specifically stipulates that the grantees are not entitled to them, there are occasions in which the grantees have been benefited by the waters of the Toro Negro river, as it was physically impossible to separate them at the lake.

Q. 27. What other conditions there have been [sic]? A. From and after the year 1928 the Government of Puerto Rico, in accordance with the provisions of an act to develop the water resources, approved first in the year 1925 and upheld by the Circuit Court of Boston in its entirety, and amended in 1927, with the object of giving a greater intervention to the Government in the development of the natural irrigation sources of the island, the Insular Government has been engaged in a project known as the Toro Negro river project. It consists in the construction of dams in the Toro Negro and Matrullas river, with the object of storing the waters of floods that formerly went to the Matrullas river. Guineo dam was constructed at the bed of the Toro Negro river, and the water stored was carried through Toro Negro plant to Guayabal dam, at the level of the tunnel of the Toro Negro river. The irrigation plan was enlarged and Matrullas lake was constructed by carrying the water again from the said Toro Negro tunnel to Guayabal lake.

Q. 28. In order to be plainer it would be convenient for you to explain to the court the route followed by Guayabal, where it is situated? A. The Guayabal lake is situated about five kilometers north of the town of Juana Diaz and it holds through a dam which was constructed, all the water of the Jacaguas river. That is to say, the water from the floods of the Jacaguas river

are stored there. Prior to the year 1928-29, that lake only contained the water that fell on the banks of the Jacaguas river and those which could be used from the Toro Negro river. Under the new project the water of the Toro Negro river and the water of lake Matrullas are stored in that same lake. I mean to say that the floods that formerly were lost in the sea are utilized at present and are used to supply the Guayabal lake. The 40 per cent benefit now received by these grantees is due to the development of the water source, caused by the new plan established by the Insular Government. For example before the year 1930, these concessions and this contract, almost every year suffered from a scarcity of water at the Guayabal lake, by reason of the small amount of water stored at the Guayabal dam. During the last four years the Guayabal dam has always had enough water to make deliveries in due time, daily, as there has always been plenty of water in the Jacaguas river.

Plaintiff: In connection with the testimony of Mr. Luchetti I would like to offer in evidence certain documents which form part of the report to which I referred some time ago. These documents are—one of them has been mentioned in the answer—the distribution plan of the waters of the Jacaguas river according to the old concessions and the other document is a graph showing the situation, as regards the water received by those concessions during 4½ years. This graph is based on the daily records of the irrigation system in 1910. Mr. Luchetti may identify these documents as well as the graphs and once identified as official documents; under his custody, we offer them in evidence.

Q. 29. Please explain this to the court. This document marked "Exhibit A-1", which forms part of the memorandum submitted by you in November, 1925— A. I shall begin with Exhibit A-1. This exhibit shows the various conditions of the water of the Jacaguas river, the order of priority that is the turns which do not appear on the definite distribution plan, the concessions in acre-feet per second and the increase in volume needed in the Jacaguas river in order to be able to supply them according to

their order of priority. That with the object of explaining the graphs, the Jacaguas river needed continuously a volume of 4.08 cubic feet per second in order to supply the grantees up to the limit fixed by the concessions enjoyed by each property. When the volume of the Jacaguas river was less than that, deliveries had to be made by turns.

Q. 30. According to your knowledge and the records, did the Jacaguas river normally have that amount of water? A. No, sir. The hydrographic charts show that it did not have that volume. The graphs show the volume of water obtainable from the Jacaguas river during the $4\frac{1}{2}$ years immediately preceding the enlargement of the irrigation system. The horizontal lines indicate the amount of the concession and it may be seen in a graphical manner to what extent there was water available at the Jacaguas river to supply the concessions.

Plaintiff: We offer them in evidence, as part of the report that we had already offered, subject to the same exception.

Defendant: May I ask a question?

Judge: You may.

X-Q. 31 (by Defendant). Does this document Exhibit A-1 refer to all the properties that enjoy concessions? A. From the Jacaguas river.

X-Q. 32. Does it not refer to the properties of Russell & Co.? A. Necessarily according to the order of the turns, for it is well-known that the concessions were not bound to receive the water according to the turns. Nothing has modified that. The contracts cannot alter that.

X-Q. 33. Does that refer to the 13 parcels? A. To all of the parcels among which you have Fortuna, Placeres and Amelia estates. All the contracts were jointly considered by the Commissioner of the Interior.

Defendant: I object to the admission of this evidence as absolutely immaterial and irrelevant. As regards the fact that this report of November 12, 1925, is a true and exact copy of the

one submitted by him, we admit that but we do not accept its relevancy.

Plaintiff: That is subject to the same objection he had presented. We also offer this other document in connection with his testimony. That will be all.

X-Q. 33a (by Defendant). Mr. Luchetti, you have stated that during the years 1910 to 1914, the concessions received 19 per cent more water— A. Less water.

X-Q. 34. From 1915 to 1919 they received 19 per cent more water than during the same length of time, that is than during the 4½ years elapsing between 1910 to 1914? A. Yes, sir.

X-Q. 35. When you speak of the concessions, do you refer to all the concessions of the Jacaguas river, that is to 13 concessions according to Exhibit A-1, or simply to our concessions? A. To the concessions of Russell & Co., but in the former chart appeared Fortuna estate, as well as Union, Placeres and Amelia estates of Russell & Co.

X-Q. 36. Amelia estate is not in controversy herein. A. But it was included at that time.

X-Q. 37. Does that simply refer to our concessions? A. To yourselves. I must state that the aforesaid 19 per cent affects each and every one of the parcels included, as every one of them was subject to the same turn and received water during the former 4½ years. So that the aforesaid percentage affects all of the parcels collectively the same as everyone of them individually.

X-Q. 38. In spite of having received 19 per cent more benefits, did Russell & Co. receive a single drop of water in excess of the amount that it was entitled to receive? A. It did not receive a single drop of water in excess of the amount stipulated in the contract.

X-Q. 39. And the same situation prevailed during the last four years ending in 1935, when according to your testimony, said properties received a benefit of 40.10 per cent? A. Yes, sir.

X-Q. 40. But in spite of receiving a benefit of 40.10 per cent they did not receive a single drop of water in excess of the amount.

which they were entitled to receive according to the concessions and the contracts?

Plaintiff: I object as that is a question of law that has not been decided. We mean the amount of water that they were entitled to receive. To avoid that difficulty I would suggest that counsel for the opposite party used the word "maximum".

X-Q. 41. The maximum amount of water which they were entitled to receive according to the concessions and under the contract. A. They received a much greater amount of water.

X-Q. 42. And the amount received in excess of the concessions was in excess of the limits of the concession? A. Of the limits of the concession.

X-Q. 43. Please state the amount. My question is based on the limit that you were entitled to receive. A. If there had been enough water available. The difference in percentage during the last years is due to the fact that a much greater amount of torrential water—mentioned also in the concessions and in the contracts—could not be used for a much longer period than before. Formerly floods lasted from 3 to 4 hours. Now, owing to the dams, when there is a flood, the rain falls and exceeds the limit. If the excess is not stored it lasts several days and thus the concessions formerly enjoyed those floods for a longer period of time. That by itself is an immense benefit, obtained by reason of the work we have done.

X-Q. 44. Then, putting it in other words. During the last four years Russell & Co., in accordance with your testimony, has received 100 per cent of the water to which it was entitled under the concession, and that 100 per cent is more than what it previously received? A. It is more under the terms of the franchise, as formerly there was not enough water available.

X-Q. 45. Have they ever received more than 100 per cent? A. More than 100 per cent would have exceeded the terms of the contract.

X-Q. 46. You have spoken of the benefits received by Russell & Co. under the irrigation system, on account of the irrigation

system, of the construction of the dam and of the improvements made in the water of the Toro Negro river which passed from the lake to the Guayabal dam. Is it not true that The People of Puerto Rico has also received some benefits with the irrigation system and that when it is said The People of Puerto Rico, it is meant not only the Government but also the landowners and taxpayers who have no concessions and which at present enjoy the benefit of the irrigation of their lands?

Plaintiff: I admit that that benefits the island in general, but whoever enjoys that benefit has to pay.

X-Q. 47. Before the construction of the irrigation system is it not a fact that the waters of the Jacaguas river were not enough to supply the concessions? A. Yes, sir.

X-Q. 48. If they were not enough to supply the concessions, they could not of course be enough to supply any private property? A. Not the ordinary waters.

X-Q. 49. Then it became necessary to construct the dam? A. To utilize the waters from the floods.

X-Q. 50. With what object,—with the object of giving them to other lands and to irrigate other lands that did not have concessions? A. Yes, sir.

X-Q. 51. Then the benefits of The People of Puerto Rico through the construction of the irrigation system are received by supplying water for irrigation purposes to other persons and to other taxpayers which did not have concessions during the Spanish times? A. Yes, sir.

X-Q. 52. Then, in accordance with your testimony, there were times when in spite of the dam there was not enough water to supply the lands which did not have concessions? A. The waters of Guayabal lake, which was constructed primarily with the object of delivering water to the new irrigation system when it became scarce, as provided by law, are reduced in proportion to each acre of land included in the district and in accordance with the amount of water available in the dam. However, the contracts under which delivery is made to the concessions of Fortuna estates and

others, from the Jacaguas river, stipulate a constant daily supply, so that under the circumstances, when waters are scant in that lake the landowners who pay a tax to defray the cost of construction and operation of the system have to suffer; they suffer because they only receive part of the water. This is done with the object of having water for as long a period of time as possible so as not to lack water at any time during drought seasons. Estates enjoying concessions receive the benefit of the water of which the landowners are deprived, as such estates keep on receiving the total amount to which they are entitled as long as the drought lasts. So they have a greater benefit than those who paid for the work. Very often neither the landowners nor the estates enjoying concessions received any water.

X-Q. 53. Is that due to the fact that compliance has to be given to the terms of the contract, that when water is scant the estate which owns concessions must receive the maximum amount stipulated in the contract? A. Yes, sir.

X-Q. 54. Is it true or not that it was by reason of the scarcity of water that The People of Puerto Rico had to join the Toro Negro river with the Guayabal dam with the object of increasing the flow of water not only with the object of supplying the concessions but also with the object of supplying the landowners who had no concessions at all?

Plaintiff: I object. Witness may not testify about the motives that The People of Puerto Rico or the Insular Legislature had to approve those laws. That is a legal question about which the witness has not been called upon to testify.

A. I must state that I do not think I have testified that the Government carried out those plans with the object of benefiting the concessions. I have said that the latter are benefited as a consequence of that.

X-Q. 55. Now let me ask you; is it not true that the reason why Toro Negro was joined to the lake and Guayabal dam was that there were occasions in which the waters of the Jacaguas river were not enough to supply in addition to the concessions, other

landowners which you also had to supply? *A.* The irrigation service, was joined to the river with the object of constructing the Guineo dam, so as to increase the supply of water. That was done, of course, in order to have a greater amount of water for its own lands and it happened that physically all the concessions are located in such a wise that most of the benefits received go to the concessions. So that all expenses incurred in the construction and operation of the irrigation system represent a benefit to the estates owning concessions.

X-Q. 56. But the fact is that when the water at the dam is enough to supply only the concessions, water cannot be supplied to lands which do not own any concessions and that that was the prevailing situation before the Toro Negro river was connected to the lake? *A.* Toro Negro was constructed right from the beginning, and Toro Negro is not subject to the contracts. The contracts stipulate that we may separate the waters of the Toro Negro river without delivering them to you. However, it is impossible to separate them and they mix with all the other waters. So that the stipulation, appearing in the contracts does not benefit The People of Puerto Rico but only yourselves.

X-Q. 57. My question is: When there is not enough water at the Jacaguas river, or in the dam to serve the concessions, did you say that you allow the waters to run and that the concessions are served according to the terms of the concessions granted by the Crown of Spain? *A.* Yes, sir.

X-Q. 58. And that abnormal situation prevailed formerly? *A.* At times.

X-Q. 59. And while that situation prevailed, the persons who did not have any concessions received no water for irrigation purposes? *A.* They did not.

X-Q. 60. Then it became necessary to increase the volume of the waters at the Guayabal dam? *A.* Yes, sir.

X-Q. 61. What did the Government do to increase the volume of water at the dam? *A.* Joined a new source.

X-Q. 62. Who was specially benefited with the increase of the

amount of water at the dam? A. All persons who were supplied water, including the concessions, because if the Jacaguas river became dry, water flowed so slowly that then there was enough water only for two or three concessions.

X-Q. 63. Witness would not deny that the ones who received the greatest benefits were the landowners who had no concessions at all, for then they had enough water to irrigate their lands? A. But they paid for that.

X-Q. 64. But is it true or not that they are the ones who receive the greatest benefits, as before they had no water and now they do? A. Yes, sir.

X-Q. 65. Then, to summarize: All these improvements were made not with the object of benefiting Russell & Co. specifically, but primarily in order that the irrigation system might have enough water to serve the lands which had no concessions? A. These improvements were primarily made as part of greater projects carried out with the object of developing the water sources in Puerto Rico. As an incidental question Guayabal, which occupies a strategic situation in the irrigation system, was benefited thereby.

X-Q. 66. As an expert on the matter, do you believe that The People of Puerto Rico has received no benefits by virtue of the contracts presented in evidence and marked "Defendant's Exhibits A" and "B"?

Plaintiff: That is not in issue. The People of Puerto Rico cannot be benefited by what was given gratuitously to a piece of property owning a concession. The People of Puerto Rico now and the Spanish Government before. The water concession was a donation. I admit that the irrigation system has been highly beneficial to The People of Puerto Rico.

Defendant: And that by virtue of the contracts entered into with Russell—

Plaintiff: Not that. How am I going to admit that the contracts benefit The People of Puerto Rico. The contracts are prejudicial to The People of Puerto Rico.

X-Q. 67. To the irrigation system. Does the irrigation system receive some benefits by virtue of the contract entered into by Russell & Co.? A. The role played by these contracts is in some sense to simplify the delivery of water to the concessions, because if conditions to operate our works and to deliver water had not been admitted or accepted, the Government would have had to make reservoirs at the various tributaries of the Jacaguas river in order to store the water at the intakes; in those conditions the lake would not exist. The contract has been, as said in English, an "experience" which has tended to make less difficult the execution of the contract entered into between you and the Government.

X-Q. 68. But the benefit has been mutual? A. That is right, in so far as it eliminates the possibility of misunderstanding and legal suits, with regard to the amount of water that the concessions would receive. It is in that regard simply that we may speak of benefits.

Defendant: That will be all.

Q. 69 (by Plaintiff). Mr. Luchetti, as chief of the irrigation system do you have to supervise the receipts of the irrigation system? A. I have the full administration of the system.

Q. 70. Including the income received from these taxes? A. Yes, sir.

Q. 71. Could you tell the court how the money obtained from these taxes has been invested? A. Exclusively to pay the expenses incurred in the operation and conservation of the works of the irrigation system.

Q. 72. Is a single cent or some other sum of the amount received from the taxes, used to cancel outstanding bonds or to pay some debt? A. Not a single cent. Under the special law in controversy herein the Commissioner of the Interior and the Treasurer have to carry out certain duties with the object of determining the amount of the tax every year.

Q. 73. Mr. Luchetti, in view of the office that you hold and in view of your relations with the Department of the Interior, could

you tell the court how is it that the amount of the tax is fixed every year, and specially the tax corresponding to the defendant?

A. The law mentioned by the attorney stipulates and defines clearly the expenses which are to be included in the estimate to be made with the object of determining the tax. The law says that the estimate of the cost of operation of the system, plus the amounts of principal and interest payable on the principal, shall be included in the estimate to be submitted annually by the Commissioner of the Interior to the Treasurer of Puerto Rico. Hence all we do is to supply the necessary data to the Department of the Interior and thus comply with the provisions of the law. I am referring to the general tax:

Q. 74. In order to refresh your memory allow me to present a draft prepared by you. For a better understanding it would be a good idea for you to tell what the general irrigation law provides.

A. The general act provides that the cost of maintenance and repairs estimated by the Commissioner of the Interior shall be added to the amount payable during the next fiscal year as principal and interest on the debt, and from the sum of these expenses, the income resulting from the sale of electricity and water shall be subtracted, and the resulting difference shall be equally divided among each acre of land, including those of the irrigation district which sum up to 26,000 and odd acres of land. Out of those 26,000 acres, there are 2,000 that receive credit for concessions granted. Hence, the difference is divided into 24,000 acres of land in order to fix the ordinary tax of the irrigation system, which includes the cost of construction and conservation. The tax fixed by Act No. 49 of 1921 refers solely to the expenses of operating the system and in making an estimate of those expenses, and orders that an estimate of those expenses be submitted to the Treasurer of Puerto Rico in order that he may use the same in his mathematical operation; and the law requires from the Treasurer of Puerto Rico and from the Commissioner of the Interior that the expenses of the hydroelectric system, be separated from those of the irrigation system. Then it states which

are, strictly speaking, the expenses of the operation of the irrigation system and which are those of the hydroelectric system. From those expenses is deducted the amount which may come to the irrigation fund from water in excess, and the sum obtained is divided by 32,000-odd acres which is the total number of acres benefited by the irrigation system, including the concessions, and the resulting quotient is the amount assessed as special tax for the maintenance of the irrigation system. To be more exact, in the administration of the system that money is not charged to the owners of the concessions, so that the owner pays only for the operation expenses, that is for the operation and conservation of the system, for the amount of water that they receive. In order to make the estimate the superavit resulting from the previous year compared with the estimate for the next year is deducted and then the same is credited to the cost. Hence the owner of the concession does not pay a cent in excess of the actual cost of operating the system.

Q. 75. Are these operations and data taken into consideration by the Commissioner of the Interior with the object of communicating to the Treasurer the approximate estimates of the operation cost? A. He simply makes the arithmetical operation defined by law.

Plaintiff: That will be all.

X-Q. 76 (by Defendant). Then Mr. Luchetti, who determines the rate of taxation to be paid under Act No. 49 of 1921? A. The act itself.

X-Q. 77. Does the act say that the Commissioner of the Interior shall determine the rate? Who determines whether it is two or three per cent?

Plaintiff: That is an opinion.

A. What the Commissioner of the Interior simply does it to supply the data.

X-Q. 78. Who fixed the rate of taxation in 1922? A. The Treasurer of Puerto Rico.

X-Q. 79. Did not the Commissioner of the Interior do that?
A. The Commissioner supplies the data. The Treasurer fixes the tax.

Plaintiff: That detail may be explained by Mr. Martinez Chapel.

Defendant: The law says that. That will be all.

SWORN TESTIMONY OF JUAN MARTINEZ CHAPEL.

Q. 1 (by Plaintiff). What is your name? A. Juan Martinez Chapel.

Q. 2. What is your occupation? A. Assessor of corporations and officer in charge of matters pertaining to the irrigation tax in the Treasury Department of Puerto Rico.

Q. 3. As an officer of the Department of Finance of Puerto Rico have you had anything to do with regard to the application of Act No. 49 of 1921? A. Yes, sir.

Q. 4. What have you had to do with that? A. For many years I have been the officer in charge—

Q. 5. Are you in charge of that bureau? A. In connection with irrigation matters I am the officer in charge of the irrigation taxes.

Q. 6. Are you the person who makes the necessary calculations with the object of enforcing the irrigation tax laws? A. Yes, sir.

Q. 7. With regard to this special tax, what personal intervention have you had in carrying out the necessary mathematical operations with the object of enforcing every year the aforesaid act and of levying the corresponding taxes? A. A letter is written every year to the Commissioner of the Interior with the request that he certify the expenses incurred in the conservation of the irrigation system, as well as the income that he imagines the irrigation system will have, from the sale of water and from the sale of hydroelectric power. In making these calculations an estimate is made of the amount to be paid by each parcel under Act 49, as follows: To the amount estimated as the conservation cost of the irrigation system, the amount to be spent in hydroelectric power is deducted, as well as the amount they expect to

receive from the sale of water during that year. To the balance is added whatever deficit there may have been during the prior year and any superavit deducted. The amount remaining after that operation is divided between the number of acres which receive water from the irrigation system. The quotient resulting from the division of the amount estimated by the number of acres, is then the rate of taxation.

Q. 8. Referring to the case of the defendant, please cite examples showing how the tax has been figured for several years.

Plaintiff: I wish to clearly state that all this is specified by Act No. 49 of 1921. If there is some difference between the testimony of the witness and what the law specifies, the court shall take into consideration what the law provides.

A. For the year 1925-26, the Commissioner of the Interior figured that the expenses to be incurred in the operation and conservation of the irrigation system for that year would be \$169,325. From that amount \$57,435 would correspond to the hydroelectric system and \$20,000 to the sale of water. The amount corresponding to the hydroelectric system plus the \$20,000 corresponding to the sale of water, or a total of \$77,435, is deducted from the water system and from the conservation and operation expenses. A balance of \$91,890 remained. To this amount the sum of \$5,313.57, the deficit for the former year, had to be added and this gave a total of \$97,203.57. This amount divided by 32,476.59 acres which receive water, gives 2.99, which was the rate fixed on each acre as cost of maintenance of the irrigation system.

Q. 9. During the number of years to which the complaint refers, that is, during the years 1922 to 1934, has that rate been different or has it been the same? A. The rate of taxation differs according to the water sold and the estimated expenses.

Q. 10. Then there are factors which differ? A. They differ every year.

Q. 11. Please mention some factors for 3 or 4 years. A. During the year 1926-27, instead of a deficit of \$5,000 there was a

superavit of \$16,000. This superavit is deducted instead of being added.

Q. 12. And the rate of taxation was? A. \$2.99 because the estimated cost was higher. \$2.99, about the same as the former year. In the year 1928-29 there was a superavit of \$5,000, and the rate was \$2.86, because the amount estimated for expenses was lower than the former year.

Q. 13. What is the custom followed by the Finance Department in connection with taxpayers in so far as this data is concerned, are these data communicated to the taxpayers? A. As soon as these data are delivered, the same are forwarded to each taxpayer, to the person who owns or is the lessee of a parcel of land, to both. There is a printed sheet showing the cost or amount estimated by the Commissioner of the Interior as operating expenses; the amount corresponding to the hydroelectric system; the superavit of the former year; the number of acres according to which the rate of taxation per acre is determined; and showing finally the amount that everyone has to pay per acre according to the number of acres in his possession.

Q. 14. Does the taxpayer know what becomes of the amount collected as irrigation tax, whether it is deposited in an ordinary fund or in a special fund in the Treasury Department? A. It is deposited in a special fund known as "Irrigation Fund".

Q. 15. How is it spent? A. In irrigation exclusively.

Q. 16. In what part of the irrigation system? A. That amount is invested in the maintenance of the system.

Q. 17. In the operation of the irrigation system? A. Yes, sir.

Q. 18. Is not part of the amount used in paying part of the bonds issued by The People of Puerto Rico to construct the irrigation system? A. I am not the person in charge of the distribution of the money, it remains as an irrigation fund.

Q. 19. Is it not mixed with the other funds in the Treasury Department? A. No, sir.

Q. 20. In fixing the tax rate, what is taken into consideration

is the cost of the irrigation system but not the bonds nor the interest thereon? A. That concerns the other taxpayers.

Q. 21. The only thing taken into consideration is the operation expenses? A. The operation expenses.

Plaintiff: That will be all.

X-Q. 22 (by Defendant). Have you any information as to the rate of taxation for the year 1924? A. 1924 to 1925?

X-Q. 23. Yes, sir. A. Yes, sir.

X-Q. 24. What was it? A. The rate was 3.3070.

X-Q. 25. For the year 1929-30, what was the rate? A. 2.1650.

X-Q. 26. So that the tax differs for every year from 2.16 to 3.30? A. The highest was 3.30 for the year 1924-25 and the lowest 2.12.

Defendant: That will be all.

Plaintiff: I offer in evidence, in the first place, this return showing all the amounts mentioned and the rate of taxation for each of the parcels. In the second place these blanks, which are notices to taxpayers, showing how the tax has been figured for several years.

Defendant: There is no objection on our part.

Judge: Admitted.

X-Q. 27 (by Defendant). Then, Mr. Witness, you are the officer who determines the rate of taxation for a certain year? A. Yes, sir.

X-Q. 28. Were you the person who fixed the tax in 2.16 and 3.30? A. In accordance with the data furnished to me by the Commissioner of the Interior and in conformity with the law and the number of acres.

Defendant: That will be all.

Plaintiff: That is our case.

Defendant: The only evidence we have is the stipulation of facts.

Documentary Evidence for the Plaintiff.

EXHIBIT 1.

(As a plan is involved, the same can not be copied herein.)

EXHIBIT 2.

(As a plan is involved, the same can not be copied herein.)

EXHIBIT 3.

(As a plan is involved, the same can not be copied herein.)

EXHIBIT 4.

"November 12th, 1925.

"MEMORANDUM FOR MR. JOSE A. LOPEZ ACOSTA, ASSISTANT
ATTORNEY GENERAL.

Re: Injunction Case; Russell & Co., S. en C., *v.* The Treasurer
of Porto Rico, to prevent the collection of the Special
Irrigation Tax levied in accordance with
Act No. 49 of 1921.

"In the table entitled 'Spanish Water Concessions from the
Jacaguas river', attached to this memorandum and marked 'Ex-
hibit A-1', are listed the water concessions from the Jacaguas
river existing prior to the construction of the Public Irrigation
System. Opposite the name of each concession, and in separate
columns, are given:

"1st. Their order of priority, that is, the order in which
they were entitled to take water, up to the amount allowed
under the concession rights from the available flow in the
river;

"2nd. The amount of water allowed to be taken.

"3rd. The flow of water necessary in the river to supply
the respective concessions after all prior concessions had been
satisfied. The figures on this column are consequently the
sum of all the concession amounts preceding and including
the corresponding concession.

"This table (Exhibit A-1) has been prepared using the quantities and limits specified in the schedule, 'Cuadro Definitivo de Distribucion de Aguas del Rio Jacaguas de la Isla de Puerto Rico', approved by Royal Decree of June 8, 1880, mentioned in Clause Six of the Contract signed on August 26, 1914, covering water deliveries to Fortuna Estates. The blue print attached, and marked on the back Exhibit A-2, is a true copy of that schedule. The 'Order of Suspension', given in the schedule corresponds to the 'Order of Priority' given in Exhibit A-1; thus, the concession to be suspended first when water is not sufficient to supply all concessions is the last one in the order of priority for use of water; the second concession to be suspended, is the next to the last in the order of priority, and so on.

"Attention is invited to the fact that the amount of water allowed to be taken from the river under the concession rights, defines a *limit* as to the amount receivable when the flow or supply of water in the river is sufficient to permit the exercise of the right to take the water, but by no means does it establish for the owner of the concession a guarantee that that amount of water shall be continuously available for his use since that guarantee necessarily depends upon the stage of the river, which is an *uncertain* condition.

"Thus, when Clause 3 (for instance) of the Contract for Fortuna Estates (hereinafter referred to as the Contract) speaks of the Estate 'Luciana' as entitled to an appurtenant right to take from the Jacaguas River 82.54 liters of water per second; and immediately after cites the amount of 2,111.142 acre-feet of water per year, as the equivalent of the 82.54 liters per second, this equivalence must necessarily be given as merely intended to state that in case there is in the river plenty of water *continuously* available throughout the year then that authorized number of liters per second will add up 2,111.142 acre-feet in a year. Under the terms of the concession, water is allowed to be taken (when available), at the *rate* of not to exceed 82.54 liters per second, but *not* at the *rate* (unless water be constantly available) of 2,111.142

acre-feet per year. The latter is a resultant quantity which depends on the elements 'time' and 'quantity of water available'. If water is lacking to supply the concession, say during but one second of time in any one year, then the total accruing to that concession during that year can not physically be more than 2,111,142-acre-feet less 82.54 liters.

Therefore, in determining whether the lands covered by the Jacaguas River Concessions receive more or less water prior to the construction of the Public Irrigation System, than they have been receiving since, under the concession contracts, a *comparison can not be established* between the equivalent number of acre-feet resulting by multiplying the concession rate in liters per second by the number of seconds in a year (the equivalent mentioned in the contract), and the total number of acre-feet agreed upon in the contracts to be delivered per year by the irrigation service at the rate of so many acre-feet per day or their equivalent rate of so many cubic-feet per second. This comparison not being possible for the obvious reason that deliveries by the Irrigation Service are regularly made daily on a total yearly basis, while previously the yearly total depended on the number of days in the year when water was available in the river, which in most cases represented a low percentage of the time.

A review of the conditions of flow of the Jacaguas River during several years previous to the construction of the Guayabal Reservoir, is necessary in order to compare amounts of water available for irrigation of concession lands before and after Irrigation System was built.

Please refer to the attached graphs on the five cross-section sheets marked 'Exhibit B-1'. On each of these five sheets have been plotted the *hydrograph* of the Jacaguas River for the years 1910, 1911, 1912, 1913, and 1914 respectively. The broken line is the hydrograph, which is formed by joining the points plotted for each day of the year to correspond with the number of cubic-feet per second of flow in the river on that day. Measurements

of this flow were made and recorded daily by the Irrigation Service, and this hydrograph is a graphic reproduction of those records.

"The vertical cross-section lines represent the days of the year, and the horizontal cross-section lines represent number of cubic feet per second of flow.

"The peaks of the curve (hydrograph) show the floods occurring in the river.

"The hydrograph for the year 1914 has been plotted only up to June 30, 1914. Since that date the Guayabal Reservoir has been in operation, and deliveries of concession water has been made from the Irrigation System.

"The straight horizontal lines denoted by the names of the Concessions, represent the flow required as given in the last column of 'Exhibit A-1', to furnish water to prior concessions plus the corresponding concession.

"With these hydrographs and the lines representing the flow required to furnish the concession water, the conditions of supply and requirements for concessions, can be analyzed.

"Let us examine the graph for the year 1910: The hydrograph (broken line) lies above the horizontal line corresponding to Fortuna, throughout the year. This shows that the flow was always sufficient to supply fully the Fortuna Concession. The Serrano Concession, however, cuts the hydrograph on June the 7th, and remains above it until June 26, which shows that during the days elapsing between these two dates, there was not sufficient water in the river to supply the Serrano Concession. By tracing the Serrano line further, it is seen that there were several other short periods when there was not sufficient water for this concession. Adding these periods we find that there was during the year, 1910 a total of 38 days on which the flow was deficient and no water could be taken by the Serrano Concession.

"To further illustrate, take the case of the Luciana Concession for the same year 1910. No water was available in the river during the months of January, and February, and until March 15. Again there was no water from March 23 until April 15, from

April 17 to April 21, from April 27 to May 6, and so on, these periods of deficiency totalling 210 days.

This same analysis made for all the concessions controlled by Russell & Co., S. en C., and for the $4\frac{1}{2}$ years previous to beginning operation of the Guayabal Dam, gives the result shown in the Tabulation attached to this memorandum, marked Exhibit B-2.

That Tabulation (Exhibit B-2) gives for each concession the total number of days during the four and a half years from January 1, 1910 to June 30, 1914, in which there was not enough water in the river to supply the concession. These numbers of days deficiency, reduced to percentages of the number of days in $4\frac{1}{2}$ years, and multiplied by the total amount of water (total acre-feet receivable) that would have been taken by each concession if drawing water at a constant rate of so many liters per second (had water been constantly available) during the $4\frac{1}{2}$ years, will give the amount of water that each concession did not take because of lack of water in the river. Deducting this total deficiency from the total receivable as authorized under the concession, for the four and a half years there remains a total *actually* received by the concessions amounting to 50,382.16 acre-feet.

On the other hand, according to records, the Irrigation Service delivered to the same concessions during the four and a half years from January 1, 1915 to June 30, 1919, a total of 59,974.68 acres-feet, which represents an increase of 9,592.52 acre-feet over what the concessions received when they had to do with just what the river carried without the aid of the Irrigation System Works. This increase represents a *very material* BENEFIT, as to volume of water alone, amounting to 19% over their former supply.

Please be it noted also, that the $4\frac{1}{2}$ years from 1910 to 1914 inclusive, taken here to show the amount of water received by the concessions without the aid of the Irrigation System, were relatively wet years as compared to other years, such as the year 1908 which was a very dry year in that section of the country, and therefore they are representative of favorable conditions as to flow of the river.

"There is also attached to this memorandum a tabulation showing the total deliveries of water made by the Irrigation Service each year, from 1915 to 1924, inclusive, to all concession lands owned or operated by Russell & Co., S. en C. This tabulation is marked 'Exhibit C'.

"The quantities given in this tabulation show that with the exception of the years 1922 and 1923, which were extraordinarily dry years, deliveries have invariably exceeded the amount appurtenant under the contract.

"It should be stated that conditions as to rainfall during the years 1922 and 1923 were so critical, that had it not been for aid of the Irrigation System the Jacaguas River concessions would have gone through a very difficult situation. It suffices to state that the Jacaguas River flow, exclusive of the water added from the Toro Negro River, decreased and stayed low, reaching about the middle of June, 1923, the low mark of 2.61 cubic-feet per second which would not have been sufficient even for the Fortuna Concession alone, the first one in the order of priority, had these concessions depended, ~~as of old~~, on just the flow of the Jacaguas River.

"Summing up the above information and other considerations of weight in forming an estimate of the advantages or benefits received by the Jacaguas River Concession lands from the Public Irrigation System, the following points should be taken into account:

- "1. As regards quantity of water available for irrigation of the lands entitled to concession water from the Jacaguas River, it has been shown that the quantity received from the Irrigation System is 19% larger than what these lands used to take from the limited flow than available in the river.

- "2. It is evident that the application of irrigation water to cultivated lands, in the *amounts* and at the *time needed* is an immense advantage over the uncertain system which the planter has to follow when he has to depend on the proba-

bility of rainfall to increase the run-off of the stream from which he derives his irrigation water.

The Irrigation System with its storage reservoir impounds the flood waters, and is thus able to make regular deliveries on which the planter can count daily, and the sequence of cultivation; plowing the land, planting, irrigating, applying fertilizers, continuing irrigating during the growing period, and harvesting, can be scheduled ahead thus insuring results. The large *benefit* thereby resulting is easily appreciated.

3. With the construction of the Irrigation System the sources of supply to furnish the water appropriated by concessions from the Jacaguas River, have been very materially increased with the inflow of the waters from the Toro Negro River watershed, which lies north of the main divide of the Island, these waters being diverted to the south side into the Jacaguas River Valley and to the Guayabal Reservoir, through the Tunnel cut through the Toro Negro Mountain. These waters are pooled together in the Reservoir from which is drawn the flow to serve Concessions lands and lands included in the Irrigation District. No separation can be made of the Toro Negro Waters for purposes of reserving them for the exclusive use of the included lands, since under the terms of the Contract, full deliveries of the amount of water specified in said Contract have to be made as long as there is storage in the reservoir; and by definition made in the last paragraph of Clause Sixth of the Contract, there is 'storage' as long as the water rises over three feet above the bottom of the outlet gates.

This limit of three feet is of course so low that it practically insures for the Fortuna Estates a *full* delivery, except in those cases when the reservoir is entirely drawn down (dry), and those cases take place but very seldom, and during dry years only. It is also worth noting that while the lands included in the Irrigation District (lands which pay the water

tax to pay the cost of construction, maintenance and operation of System), have to go with only a percentage of their appurtenant water when the supply in the reservoir is low, in order to make it last through the period of low run-off in the watershed and receive during that period at least part of the water required, the Fortuna Estates, as well as the other Jacaguas River concessions, continue, by virtue of the terms of this contract, receiving their full, 100% appurtenant amount. Obviously these concession lands receive a substantially *larger benefit* than the included lands, having as they have a preferential, undiminished water service from the Reservoir. And they are given this undiminished or uniform (regular) service with waters that come both from the Jacaguas River and from the Toro Negro River watersheds. And this substantial reinforcement in the water supply furnished by the Toro Negro River, as well as the supply of impounded flood waters of the Jacaguas River, are made available for the benefit of the Fortuna Estates and the other concession lands, by the costly structures forming the Irrigation System, structures which require maintenance and proper operation and corresponding annual expenditures.

And even during the short periods that occur in dry years, when the reservoir is without storage and the Jacaguas Concessions take their supply from the run (flow) of the River, these concessions get the full benefit of the water coming from Toro Negro, because it is at such times that the work of cleaning and removing silt in front of the gates can be made and is carried out, and this work necessitates the total available flow to carry away the silt, this total flow (including Toro Negro Water) running down and becoming available for the irrigation of the Concession Lands.—And moreover, when advantage need not be taken to carry out this cleaning, the Irrigation Service finds it impracticable to separate the Toro Negro Waters for their use on the included lands, because their amount is relatively small to permit an economical

distribution among the upwards of 11,000 acres of included lands served from this Reservoir, and if allowed to remain in the Reservoir to accumulate a sufficient amount which would permit a practical distribution among such lands, then the limit of three feet which defines 'storage' available, would be reached in a few hours, and thereupon, by operation of the Contract, the full 26.5 cubic feet per second required to make full deliveries to the Concessions, would have to be drawn out, thus depleting in a very few hours the small storage accumulated, and practically all of it going to supply the Concessions. Therefore, the Irrigation Service cannot resort to separating the Toro Negro Waters, they going in their entirety to benefit the concession during the dry periods of the reservoir.

Such conditions account for the fact that while the concession lands form 31.4% of the total acreage irrigated from the Guayabal Reservoir, and the included lands the remaining 68.6% the concession lands received during the years 1916 to 1920 inclusive (which were fair average years as regards water supply), 35.5% of all the water delivered from the Reservoir, while the included lands only received 64.5%. And during the years 1921 to 1923, inclusive, in which period several long droughts occurred, the concession lands received 43.2% of all the water delivered from the Reservoir, while the included lands only received 56.8%. These percentages show conclusively the advantage of the concession lands over the included lands in the matter of receiving service from the Public Irrigation System, this advantage being even greater during the dry seasons of the year and when droughts occur, exactly the times when those concessions formerly had to go without water.

"This lengthy explanation is made to suggest the extent of the benefit received by the Fortuna Estates as well as the other Jacaguas River Concessions, with the construction and operation of

the Public Irrigation System and the protection given them by the Contracts of August 26, 1914. Their water supply for irrigation has certainly been substantially increased, not only in regard to quantity, but also and very materially as regards dependability particularly, as already stated, during the dry periods, when water is most needed and when it used to be conspicuous by its scarcity before the Irrigation System was built.

"4. There is yet a further advantage accruing to the benefit of the concession lands, brought about through the construction and operation of the Irrigation System. To the extent that the terms of the existing Contracts permit, temporary changes are allowed in the distribution of the waters, either as regards quantities or places of delivery to better meet at the proper time the requirements of the land. These changes consist in transferring part or all of the waters deliverable at a specified point, to another or other intakes where a more advantageous disposition can be made of it by the water users. These changes are allowed either at the special request of the concessionaires (water users) to suit their own convenience, or because the change is suitable to both parties, the user and the Irrigation Service, under the conditions obtaining at the time.

Under the terms of the Contract the Irrigation Service is required to make deliveries of specified amounts of water from the main distribution canal to certain Estates, and also at certain intakes located by the side of the river for other Estates. To supply the amounts deliverable at these river intakes, the Service has to let out from the main canal into the river enough water to supply the amount specified at the intake, plus that amount lost by evaporation, absorption and seepage, along the several miles of river channel over which it has to travel to reach the intake.

It often happens that the water users (Concessionaire) can make better use of the water deliverable at a river intake, if it is delivered to him at one of the points on the main canal

where other waters pertaining to him are usually delivered, or he might request that the waters deliverable at a river intake be turned over to him at another river intake located higher up stream, from where he can to better advantage irrigate each at a time both the higher land and the lower land, with the combined amounts of water belonging to the respective separate concessions. These requests might coincide with conditions obtaining in the river, which would make it desirable for the Service to grant the request. Thus, during a period of drought, the loss by evaporation and absorption along the old river channel, is considerable, and this condition would call for a larger discharge from the canal into the river to take care of the larger loss. Under such conditions it is best for the Service to deliver the water from the canal, if the Concessionaire so desires it, than it would be to make delivery at a remote river intake.

As instances of such changes may be cited the following:

The water corresponding to the Estate "Cristina" and deliverable a long distance down in the bed of the river near the Aruz Pump, is very often delivered to Russell & Co., S. en C., at their request and with their consent, from the Juana Diaz Main Canal into their distribution reservoir located on the Estate Luciana.

The waters corresponding to the Estates "Union" and "Placeres" (which by the way represent a small percentage of the total amount of waters deliverable to Russell & Co., S. en C., as compared to the combined amounts pertaining to the Estates "Luciana", "Cristina", "Fortuna" and "Serrano"), are, at the request and consent of Russell & Co., S. en C., delivered during a great part of the time, at the river intake corresponding to the "Serrano" concession. This intake is located several miles up stream from the intakes for "Union" and "Placeres", and consequently the delivery of their water at this higher intake represents a saving of the amount of

water that would be lost in the additional travel required to reach the lower ones.

During part of the time the seepage water which finds its way into the Jacaguas River channel along its travel from the Guayabal Dam to the sea, helps to complete the supply of water required to furnish the concession amounts deliverable at the river intakes. The availability of this seepage water is of course traceable to the existence and operation of the Irrigation System. To the river channel, which drains that section of country, must travel the seepage from the Guayabal Reservoir itself, and from the main distribution and lateral canals, plus the seepage from the neighboring lands under irrigation which being saturated with the water received from the Irrigation System have to yield a large amount of seepage. It is obvious that while this seepage water, as long as and to the extent that it becomes available at the point or points of intake of the water concessions,—represents an advantage toward the operation of the reservoir, in that just that much less water has to be drawn out, nevertheless the fact cannot be denied that its benefit, which is derived from the Irrigation System, goes directly to the users (the Concessionaires) of the water, and that its occurrence reserves a further benefit for the concession lands because the amount of water which such seepage supply makes unnecessary to draw from the Reservoir, remains there in store to supply the concession when dry times come.

ANTONIO LUCHETTI,

Chief Engineer,

Porto Rico Irrigation Service.

Encls.

November 12th, 1925.

The undersigned, Hydrographer of the Porto Rico Irrigation Service, hereby certifies that the information and data given on the tabulations and graphs attached hereto and marked "Exhibit A-1", "Exhibit A-2", "Exhibit B-1", "Exhibit B-2", and "Exhibit C", are true and exact reproductions of information and data as

found in the records of my office, which records are based on actual measurements and observations made by engineers and assistants of the Porto Rico Irrigation Service during the years that this Service has been in existence.

DOMINGO PANAINI,
Hydrographer,
Porto Rico Irrigation Service:

TABULATION SHOWING THE NUMBER OF DAYS DURING THE FOUR AND A HALF YEAR PERIOD FROM JANUARY 1, 1910 TO JUNE 30, 1914, IN WHICH THE FLOW OF THE JACUAS RIVER WAS INSUFFICIENT TO FURNISH ANY OF THE WATER ALLOWED UNDER THE SPANISH CONCESSIONS TO THE ESTATES OWNED OR OPERATED BY RUSSELL & CO., S. en C.

YEAR	PORTUÑA	SERRANO	UNION	AMELIA	LUCIANA	CRISTINA	PLACERES	TOTAL
1910	0	38	151	209	210	214	217	217
1911	0	3	145	187	199	215	217	217
1912	0	26	189	153	193	180	189	189
1913	0	14	157	137	218	258	270	270
1914	0	9	113	138	140	147	147	147
TOTAL DAYS	0	70	615	631	646	632	636	636
Time DEFICIENCY	0%	6%	42%	54%	57%	62%	65%	65%
Total acre-feet RECEIVABLE IN 4 1/2 years	16,078.09	11,769.86	4,856.80	23,875.28	9,496.94	12,280.95	2,531.07	80,411.49
Acre-feet DEFICIENCY	0	707.39	1,913.65	12,766.87	5,413.26	7,614.19	1,594.87	30,029.33
Amount RECEIVED IN 4 1/2 years	16,078.09	11,062.47	2,943.15	10,892.01	4,083.68	4,666.76	936.20	50,382.16
Total amount delivered to above Estates by the Porto Rico Irrigation Service in the period of 4 1/2 years from January 1, 1915 to June 30, 1919							59,974.68	acre-feet
Total amount taken by above Estates under the Spanish Concessions during the 4 1/2 years (from January 1, 1910 to June 30, 1914) preceding the completion of the (Irrigation Services) Guayabal Dam							50,382.16	"
INCREASE in water for irrigation of above Estates, brought about by Public Irrigation System							9,592.52	"
							19% BENEFIT	"

PORTO RICO IRRIGATION SERVICE
— GUAYAMA P. R.

SPANISH WATER CONCESSIONS
FROM THE
JACQUEZ RIVER.

ESTATE	ORDER OF PRIORITY	CONCESSION AMOUNT CUBIC FEET PER SECOND	STRAIN FLOW REQUIRED TO COVER CONCESSION AMOUNT BY PRIOR CONCESSIONS.
Town of Juana Díaz	1	0.141	0.141
Fortuna	2	4.985	5.076
Boca Chica	3	3.487	6.803
Serrano	4	3.619	12.122
Ureula	5	4.244	16.366
Potale	6	5.548	21.914
Unión	7	1.398	23.312
Anella	8	7.268	30.580
Laciara	9	2.915	33.495
Cristina - Arus Pump	10	3.770	37.265
Boca Chica	11	1.279	38.544
Flacores	12	0.777	39.321
San Fernando	13	1.867	41.188

PORTO RICO IRRIGATION SERVICES,
GUAYAMA, P. R.

WATER DELIVERIES IN ACRE-FOOT VADA UNDER CONCESSION CONTRACTS
FROM
THE PUBLIC IRRIGATION SYSTEM

TO
 MANAGED AND OPERATED BY RUSSELL & CO., S. and C.

NAME OF STATE	YEAR						
	1915	1916	1917	1918	1919	1920	1921
Portuna							
Serrano							
Union							
Amelia							
Laciana							
Cristina							
Placeres							
Portuna	15569.94	12838.39	13554.75	12075.57	11813.88	13943.43	
Serrano	(Total yearly appurtenant according to contracts of August 1914. " 11,974.36 acre-feet.)						
Union							
Laciana							
Cristina							
Placeres							
Portuna							
Serrano							
Union							
Laciana							
Cristina							
Placeres							
Portuna							
Serrano							
Union							
Laciana							
Cristina							
Placeres							
Portuna							
Serrano							
Union							
Laciana							
Cristina							
Placeres							

NOTE: Russell & Co., S. en C. ceased to operate the Estate Amelia on June 30, 1921.
 " Shortage in deliveries (very small) for the year 1919 was due to non-acceptance of water offered by Irrigation Service.
 " Years 1922 and 1923 were extraordinary dry years.

PUERTO RICO IRRIGATION SERVICE
GUAYAMA, P. R.

TABULATION SHOWING AMOUNT OF WATER, IN ACRE-FEET, DELIVERED TO THE LUCIANA, CRISTINA, FORTUNA, SERRANO, UNIO, PLACENSE AND AMELIA CONCESSIONS DURING THE FOUR AND A HALF YEAR PERIOD, FROM JANUARY 1ST, 1931 TO JUNE 30TH, 1936.

	1931	1932	1933	1934	1935	TOTAL
APPORTIONMENT WATER DELIVERED IN ACCORDANCE WITH THE IRRIGATION SERVICE AGREEMENTS	11,860.39	11,403.35	11,408.30	11,403.41	5,701.65	51,801.10
EXCESS DELIVERED DURING PERIODS OF OVERFLOW OF GUAYAMA RESERVOIR	4,470.56	5,568.73	6,082.97	2,312.20	1,229.97	20,665.12
TOTAL DELIVERIES	16,060.95	16,992.06	17,425.27	12,717.31	6,960.62	72,166.23
BENEFIT	38.57%	49.01%	52.82%	24.06%	22.06%	40.11%

TABULATION SHOWING AMOUNT OF WATER, IN ACRE-FEET, DELIVERED TO THE LUCIANA, CRISTINA, FORTUNA, SERRANO, ARUS, UNIO, PLACENSE AND AMELIA CONCESSIONS DURING THE FOUR AND A HALF YEAR PERIOD, FROM JANUARY 1ST, 1931 TO JUNE 30TH, 1936.

	1931	1932	1933	1934	1935	TOTAL
APPORTIONMENT WATER DELIVERED IN ACCORDANCE WITH THE IRRIGATION SERVICE AGREEMENTS	12,161.64	11,974.60	11,973.55	11,974.66	5,987.28	54,071.73
EXCESS DELIVERED DURING PERIODS OF OVERFLOW OF GUAYAMA RESERVOIR	4,690.49	5,948.70	6,324.70	3,479.90	1,222.04	21,685.82
TOTAL DELIVERIES	16,852.13	17,943.30	18,298.25	15,454.56	7,209.32	75,757.56
BENEFIT	39.57%	49.01%	52.82%	24.06%	22.06%	40.11%

The People of Puerto Rico
Department of Finance Bureau of Property Tax

San Juan, Puerto Rico, July 1, 1934.

Mr.

Sir: The tax for the fiscal year 1934-35, fixed by virtue of Act No. 49, of 1921, on certain lands which receive water from the irrigation system of the southern coast and which do not pay the other tax determined by the irrigation act, is determined as follows:

Amount estimated by the Commissioner of the Interior to cover the cost of operation and conservation of the irrigation system during the fiscal year 34-35 \$117,515.00

Amount which according to the estimate of the Commissioner of the Interior is expected to be received from the sale of water during same year (to be deducted) \$35,600.00

Balance \$82,515.00

Superavit over the amount estimated for the year 1932-33 \$20,754.82

Total \$61,760.18

Divided between the lands determined by law, under the headings hereinafter mentioned:

Headings:	Number of Acres:
(1)	24,034.5907
(2)	2,905.7793
(3)	2,264.79
(4)	3,271.43
Total	32,476.59

Annual rate of taxation per acre \$1.9016822235

In conformity with the above, on parcel No. , Plan , of which you are owner or representative, the following tax has been assessed for the year 1934-35.

The concession of acre-feet, at the rate of acre-feet,

per acre, on an area of acres, which multiplied by the above rate of taxation gives an annual tax of \$.

Amount payable each semester \$, payable July 1, 1934, the first semester, and January 1, 1935, the second semester.

Please take notice of the above in order that you may make the corresponding payments on the dates above specified:

Yours very truly,

MANUEL V. DOMENECH, Treasurer.

The People of Puerto Rico

Department of Finance Bureau of Property Tax

San Juan, Puerto Rico, July 1, 1933.

Mr.

Sir: The tax for the fiscal year 1933-34, fixed by virtue of Act No. 49, of 1921, on certain lands which receive water from the irrigation system of the southern coast and which do not pay the other tax determined by the irrigation act, is determined as follows:

Amount estimated by the Commissioner of the Interior to cover the cost of operation and conservation of the irrigation system during the fiscal year 1933-34	\$95,665.00
Amount which according to the estimate of the Commissioner of the Interior is expected to be received from the sale of water during same year (to be deducted)	\$15,000.00
Balance	\$80,665.00
Superavit over the amount estimated for the year 1931-32	\$8,186.22

Total \$72,478.78

Divided between the lands determined by law, under the headings hereinafter mentioned:

Headings	Number of Acres
(1)	24,034.5907
(2)	2,905.7793
(3)	2,264.79
(4)	3,771.43
Total	32,476.59

Annual rate of taxation per acre \$2.2317248948

In conformity with the above, on parcel No. , Plan , of which you are owner or representative, the following tax has been assessed for the year 1933-34

The concession of acre-feet, at the rate of acre-feet per acre, on an acre of acres, which multiplied by the above rate of taxation gives an annual tax of \$

Amount payable each semester \$, payable July 1, 1933, the first semester, and January 1, 1934, the second semester.

Please take notice of the above in order that you may make the corresponding payments on the dates above specified.

Yours very truly,

MANUEL V. DOMENECH Treasurer

The People of Puerto Rico
Department of Finance Bureau of Property Tax

San Juan, Puerto Rico, July 1, 1932.

Mr.

Sir: The tax for the fiscal year 1932-33, fixed by virtue of Act No. 49, of 1921, on certain lands which receive water from the irrigation system of the southern coast, and which do not pay the other tax determined by the irrigation act, is determined as follows:

Amount estimated by the Commissioner of the Interior to cover the cost of operation and conservation of the irrigation system during the fiscal year 1932-33. . . . \$91,688.00

Amount which according to the estimate of the Commissioner of the Interior is expected to be received

from the sale of water during same year (to be deducted)	\$25,000.00
Balance	\$66,688.00
Deficit over the amount estimated for the year 1930-31	\$2,334.92
Total	\$69,022.92

Divided between the lands determined by law, under the headings hereinafter mentioned:

Headings:	Number of Acres:
(1)	24,034.5907
(2)	2,905.7793
(3)	2,264.79
(4)	3,271.43
Total	32,476.59

Annual rate of taxation per acre \$2.1253140829

In conformity with the above, on parcel No. , Plan of which you are owner or representative, the following tax has been assessed for the year 1932-33.

The concession of acre-feet, at the rate of acre-feet, per acre, on an acre of acres, which multiplied by the above rate of taxation gives an annual tax of \$

Amount payable each semester \$, payable July 1, 1932, the first semester, and January 1, 1933, the second semester.

Please take notice of the above in order that you may make the corresponding payments on the dates above specified.

Yours very truly,

MANUEL V. DOMENECH, Treasurer

The People of Puerto Rico
Department of Finance Bureau of Property Tax

San Juan, Puerto Rico, July 1, 1926

Mr.

Sir: The tax for the fiscal year 1926-27, fixed by virtue of Act No. 49, of 1921, on certain lands which receive water from the

irrigation system of the southern coast and which do not pay the other tax determined by the irrigation act, is determined as follows:

Amount estimated by the Commissioner of the Interior to cover the cost of operation and conservation of the irrigation system during the fiscal year 1926-27	\$185,825.00
Hydroelectric system (to be deducted)	70,385.00
Amount which according to the estimate of the Commissioner of the Interior is expected to be received from the sale of water during same year (to be deducted)	\$2,000.00
Balance	\$113,440.00
Surplus over the amount estimated for the year 1924-1925	\$16,162.68

Total \$97,277.32

Divided between the lands determined by law, under the headings hereinafter mentioned:

Headings:	Number of Acres:
(1)	24,034.5907
(2)	2,905.7793
(3)	2,264.79
(4)	3,271.43
Total	32,476.59

Annual rate of taxation per acre \$2.9953

In conformity with the above, on parcel No. , Plan , of which you are owner or representative, the following tax has been assessed for the year 1926-27.

The concession of acre-feet, at the rate of acre-feet, per acre, on an area of acres, which multiplied by the above rate of taxation gives an annual tax of \$

Amount payable each semester, \$, payable July 1, 1926, the first semester, and January 1, 1927, the second semester.

Please take notice of the above in order that you may make the corresponding payments on the dates above specified.

Yours very truly,

JUAN G. GALLARDO, Treasurer.

The People of Puerto Rico
Department of Finance Bureau of Property Tax

San Juan, Puerto Rico, July 1, 1924

Mr.

Sir: The tax for the fiscal year 1924-25, fixed by virtue of Act No. 49, of 1921, on certain lands which receive water from the irrigation system of the southern coast and which do not pay the other tax determined by the irrigation act, is determined as follows:

Amount estimated by the Commissioner of the Interior to cover the cost of operation and conservation of the irrigation system during the fiscal year 1924-1925	\$186,878.50
Hydroelectric system (to be deducted)	73,990.00
Amount which according to the estimate of the Commissioner of the Interior is expected to be received from the sale of water during same year (to be deducted)	\$000.00
Balance	\$112,888.50
Surplus over the amount estimated for the year 1922-1923	\$5,486.11
Total	\$107,402.39

Divided between the lands determined by law, under the headings hereinafter mentioned:

Headings:	Number of Acres:
(1)	24,034.5907
(2)	2,905.7793
(3)	2,264.79
(4)	3,271.43
Total	32,476.59

Annual rate of taxation per acre \$3.307071

In conformity with the above, on parcel No. , Plan , of which you are owner or representative, the following tax has been assessed for the year 1924-1925.

The concession of acre-feet, at the rate of acre-feet, per acre, on an area of acres, which multiplied by the above rate of taxation gives an annual tax of \$

Amount payable each semester \$, payable July 1, 1924, the first semester, and January 1, 1925, the second semester.

Please take notice of the above in order that you may make the corresponding payments on the dates above specified.

Yours very truly,

JUAN G. GALLARDO, Treasurer.

The People of Puerto Rico

Department of Finance Bureau of Property Tax

San Juan, Puerto Rico, July 1, 1927

Mr.

Sir: The tax for the fiscal year 1927-28, fixed by virtue of Act No. 49, of 1921, on certain lands which receive water from the irrigation system of the southern coast and which do not pay the other tax determined by the irrigation act, is determined as follows:

Amount estimated by the Commissioner of the Interior to cover the cost of operation and the conservation of the irrigation system during the fiscal year 1927-28 \$101,930.00

Amount which according to the estimate of the Commissioner of the Interior is expected to be received from the sale of water during same year (to be deducted)

\$10,000.00

Balance

\$91,930.00

Deficit over the amount estimated for the year

1925-26

\$10,215.38

Total

\$102,145.38

Divided between the lands determined by law, under the headings hereinafter mentioned:

Headings:

Number of Acres:

(1) 24,034.5907

(2) 2,905.7793

(3) 2,264.79

(4) 3,271.43

Total 32,476.59

Annual rate of taxation per acre \$3.1452004503

In conformity with the above, on parcel No. , Plan of which you are owner or representative, the following tax has been assessed for the year 1926-27.

The concession of acre-feet, at the rate of acre-feet, per acre, on an area of acres, which multiplied by the above rate of taxation gives an annual tax of \$

Amount payable each semester \$, payable July 1, 1927, the first semester, and January 1, 1928, the second semester.

Please take notice of the above in order that you may make the corresponding payments on the dates above specified.

Yours very truly,

JUAN G. GALLARDO, Treasurer.

The People of Puerto Rico
Department of Finance Bureau of Property Tax

San Juan, Puerto Rico, July 1, 1925

Mr.

Sir: The tax for the fiscal year 1925-1926, fixed by virtue of Act No. 49, of 1921, on certain lands which receive water from the irrigation system of the southern coast and which do not pay the other tax, determined by the irrigation act, is determined as follows:

Amount estimated by the Commissioner of the Interior to cover the cost of operation and conservation of the irrigation system during the fiscal year 1925-1926	\$169,325.00
Hydroelectric system (to be deducted)	57,435.00
Amount which according to the estimate of the Commissioner of the Interior is expected to be received from the sale of water during same year (to be deducted)	\$20,000.00
Balance	\$91,890.00
Deficit over the amount estimated for the year 1923-1924	\$5,313.57
Total	\$97,203.57

Divided between the lands determined by law, under the headings hereinafter mentioned:

Headings:	Number of Acres:
(1)	24,034.5907
(2)	2,905.7793
(3)	2,264.79
(4)	3,271.43
Total	32,476.59

Annual rate of taxation per acre \$2.9930349

In conformity with the above, on parcel No. , Plan

of which you are owner or representative, the following tax has been assessed for the year 1925-26.

The concession of acre-feet, at the rate of acre-feet, per acre, on an area of acres, which multiplied by the above rate of taxation gives an annual tax of \$

Amount payable each semester \$, payable July 1, 1925, the first semester, and January 1, 1926, the second semester.

Please take notice of the above in order that you may make the corresponding payments on the dates above specified.

Yours, very truly,

JUAN G. GALLARDO, Treasurer.

The People of Puerto Rico
Department of Finance Bureau of Property Tax

San Juan, Puerto Rico, July 1, 1928.

Mr.

Sir: The tax for the fiscal year 1928-29, fixed by virtue of Act No. 49, of 1921, on certain lands which receive water from the irrigation system of the southern coast and which do not pay the other tax determined by the irrigation act, is determined as follows:

Amount estimated by the Commissioner of the Interior to cover the cost of operation and conservation of the irrigation system during the fiscal year 1928-29	\$108,470.00
Amount which according to the estimate of the Commissioner of the Interior is expected to be received from the sale of water during same year (to be deducted)	\$10,000.00
Balance	\$98,470.00
<i>Superavit</i> over the amount estimated for the year 1926-27	\$5,433.36
Total	\$93,036.64

Divided between the lands determined by law, under the headings hereinafter mentioned:

Headings:	Number of Acres
(1)	24,034.5907
(2)	2,905.7793
(3)	2,264.79
(4)	3,271.43
Total	32,476.59
Annual rate of taxation per acre	\$2.86472933

In conformity with the above, on parcel No. , Plan of which you are owner or representative, the following tax has been assessed for the year 1928-29.

The concession of acre-feet, at the rate of acre-feet, per acre, on an area of acres, which multiplied by the above rate of taxation gives an annual tax of \$

Amount payable each semester \$, payable July 1, 1928, the first semester, and January 1, 1929, the second semester.

Please take notice of the above in order that you may make the corresponding payments on the dates above specified.

Yours very truly,

JUAN G. GALLARDO, Treasurer.

The People of Puerto Rico
Department of Finance Bureau of Property Tax

San Juan, Puerto Rico, July 1, 1931

Mr.

Sir: The tax for the fiscal year 1931-32, fixed by virtue of Act No. 49, of 1921, on certain lands which receive water from the irrigation system of the southern coast and which do not pay the other tax determined by the irrigation act, is determined as follows:

Amount estimated by the Commissioner of the Interior to cover the cost of operation and conservation of the irrigation system during the fiscal year 1931-32 \$102,252.00

Amount which according to the estimate of the Commissioner of the Interior is expected to be received from the sale of water during same year (to be deducted)	\$30,000.00
Balance	\$72,252.00
Deficit over the amount estimated for the year 1929-30	\$23,844.08
Total	\$96,096.08

Divided between the lands determined by law, under the headings hereinafter mentioned:

Headings:	Number of Acres:
(1)	24,034.5907
(2)	2,905.7793
(3)	2,264.75
(4)	3,271.43
Total	32,476.59

Annual rate of taxation per acre \$2.9589341473.

In conformity with the above, on parcel No. , Plan of which you are owner or representative, the following tax has been assessed for the year 1931-32:

The concession of acre-feet, at the rate of acre-feet, per acre, on an area of acres, which multiplied by the above rate of taxation gives an annual tax of \$

Amount payable each semester \$, payable July 1, 1931, the first semester, and January 1, 1932, the second semester.

Please take notice of the above in order that you may make the corresponding payments on the dates above specified.

Yours very truly,

MANUEL V. DOMENECH, Treasurer.

Permanent Irrigation District

RETURN FOR PURPOSES OF LEVYING SPECIAL IRRIGATION TAX
FIXED BY ACT 49 OF 1921.

Property No. 379.

Owner

Plan: *Mercedita, Fortuna, Juana Diaz**Russell & Co., S. en C.*

Total No. of acres: 736.71

*Ponce, Originally*Name of the Estate: *Luciana*Situated in the Municipality of *Juana Diaz*Ward: *Collores, Cayabo, Jacaguas*

Boundaries

Representative

North: *Jacaguas River**Originally*South: *Jacaguas River,**P.J.D. Road.*East: *Juana Diaz, Villalba, Road**J. Diaz—Town.*West: *Lot No. 380, Jacaguas River.*

Value in acre feet of the water right or concession: 1,260.22

Equivalent to an area of: 315.06 acres.

Taxes

Fiscal year	Receipt No.	Tax rate per acre	Tax per year	Surcharges to March 30	Surcharges to June 30, 1930
1922-1923	13	2.9632113	933.58	406.11	420.12
1923-1924	13	3.26388946	1028.32	385.62	401.04
1924-1925	13	3.307071	1041.92	328.20	343.83
1925-1926	13	2.9930349	942.98	235.74	249.88
1927-1928	12	3.14520045030	990.92	133.77	148.63
1926-1927	13	2.9953	943.70	184.02	198.18
1928-1929	12	2.86472933	902.56	67.69	81.23
1929-1930	12	2.165053484	682.12	8.53	18.76
1930-1931	12	2.37514827	748.32		
1931-1932	12	2.9589341473	932.24		
1932-1933	12	2.1253140829	669.60		
1933-1934	11	2.2317248948	703.12		
1934-1935	11				

Remarks: Tax	\$7,466.10
Surcharges to June 30, 1930	1,861.67
Total	<u>\$9,327.77</u>

Permanent Irrigation District

RETURN FOR PURPOSES OF LEVYING SPECIAL IRRIGATION TAX
FIXED BY ACT 49 OF 1921.

Property No. 403

Owner

Plan: Mercedita, Fortuna, Juana Diaz

Russell & Co., S. en C.
Originally.

Total No. of acres: 913.44.

Name of the Estate: Fortuna

Situating in the Municipality of Juana Diaz

Ward: Sabana Llana

Boundaries

Representative

North: Lots No. 307-A, 335, 336, 334, 338,
340, 399, 402, 423, Jacaguas River.

South: Lots Nos. 404, 413, Jacaguas River.

East: Jacaguas River. —————, Originally

West: Lots Nos. 413, 414, 421 and 423.

Value in acre feet of the water right or concession: 3,306.45

Equivalent to an area of 826.61 acres

Taxes

Fiscal year	Receipt No.	Tax rate per acre	Tax per year	Surcharges to March 1930	Surcharges to June 30, 1930
1922-1923	14	2.9632113	2,449.42	1,065.50	1,102.24
1923-1924	14	3.26388946	2,697.96	1,011.74	1,052.21
1924-1925	14	3.307071	2,733.66	861.10	902.11
1925-1926	14	2.9930349	2,474.08	618.52	655.63
1926-1927	14	2.9953	2,475.96	482.81	519.95
1927-1928	13	3.14520045030	2,599.86	350.98	389.98
1928-1929	13	2.86472933	2,368.02	177.60	213.12
1929-1930	13	2.165053.484	1,789.66	22.37	49.22
1930-1931	13	2.37534827	1,963.32		
1931-1932	13	2.9589341473	2,445.88		
1932-1933	13	2.1253140829	1,756.80		
1933-1934	12	2.2317248948	1,844.76		
1934-1935	12				

Remarks: Tax \$19,588.62
 Surcharges to June 30, 1930 4,884.46
 Total \$24,473.08

Permanent Irrigation District

RETURN FOR PURPOSES OF LEVYING SPECIAL IRRIGATION TAX
 FIXED BY ACT 49 OF 1921.

Property No. 295.

Owner

Plan: Mercedesita, Fortuna, Juana Diaz

Russell & Co., S. en C.,

Total No. of acres: 914.97

Ponce, P. R., Originally.

Name of the Estate: Gristina

Situated in the Municipality of Juana Diaz

Ward: Amuelas

Boundaries

Representative

North: Jacaguas River, Lots Nos. 371-A,

374, 375, 377, P. & S.J. Road.

Originally.

South: Lot 366-A, Jacaguas River, Lots

291, 295-C, 296, 359, 364, 366.

East: Lots 294, 296-A, 317-A, 319-A, 323-A.

West: Jacaguas River, Lots 371, 383.

Value in acre feet of the water right or concession: 741.21

Equivalent to an area of 185.30 acres.

Taxes

Fiscal year	Receipt No.	Tax rate per acre	Tax per year	Surcharges to March 1930	Surcharges to June 30, 1930
1922-1923	12	2.9632113	549.08	238.85	247.09
1923-1924	12	3.26388946	604.80	226.80	235.87
1924-1925	12	3.307071	612.80	193.03	202.22
1925-1926	12	2.9930349	554.60	138.65	146.97
1926-1927	12	2.9953	555.04	108.24	116.57
1927-1928	11	3.14520045030	582.80	78.68	87.42
1928-1929	11	2.86472933	530.84	39.81	47.77
1929-1930	11	2.165053484	401.18	5.01	11.03
1930-1931	11	2.37514827	440.12		
1931-1932	11	2.9589341473	548.28		
1932-1933	11	2.1253140829	393.82		
1933-1934	10	2.2317248948	413.54		
1934-1935	10	2.			

Remarks: Tax \$4,391.14
 Surcharges to June 30, 1930 ... 1,094.94
 Total \$5,486.08

Permanent Irrigation District

RETURN FOR PURPOSES OF LEVYING SPECIAL IRRIGATION TAX
 FIXED BY ACT 49 OF 1921..

Property No. 403.

Owner

Plan: Mercedita, Fortuna, Juana Diaz

Russell & Co., S. en C.

Total No. of acres: 913.44

Originally.

Name of Estate: Fortuna

Situated in the Municipality of Juana Diaz

Ward: Sabana Llana

Boundaries

Representative

North: Lots 307-A, 335, 336, 334, 338,

339, 340, 391, 399, 402, 423.

Originally.

Jacaguas River.

South: Lots 404, 413 and Jacaguas River.

East: Jacaguas River.

West: Lots 413, 414, 421 and 423.

Value in acre feet of the water right or concession: 571.27

Equivalent to an area of 114.25 acres.

Taxes:

Fiscal year	Receipt No.	Tax rate per acre	Tax per year	Surcharges to March 1930	Surcharges to June 30, 1930
1922-1923	22	2.9632113	338.54	147.26	152.30
1923-1924	22	3.26388946	372.90	139.84	145.43
1924-1925	22	3.307071	377.84	119.02	124.69
1925-1926	22	2.9930349	341.96	85.49	90.62
1926-1927	22	2.9953	342.22	66.73	71.86
1927-1928	21	3.14520045030	359.34	48.51	53.89
1928-1929	21	2.86472933	327.30	24.55	29.45
1929-1930	21	2.165053484	247.36	3.09	6.80
1930-1931	13	2.37514827	1963.32		
1931-1932	13	2.9589341473	2443.88		
1932-1933	13	2.1253140829	1756.80		
1933-1934	12	2.2317248948	1844.76		

Plaintiff's Exhibit 4.

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Remarks: Tax	\$2,707.46
Surcharges to June 30, 1930 ...	675.04
	<hr/>
Total	\$3,382.50

(This lot belongs also to the third class.)

Permanent Irrigation District

RETURN FOR PURPOSES OF LEVYING SPECIAL IRRIGATION TAX
FIXED BY ACT 49 OF 1921.

Property No. 413.

Owner

Plan: Mercedita, Fortuna, Juana Diaz

Russell & Co., S. en C., Ponce
Originally.

Total No. of acres: 1,044.55

Name of the Estate: Union

Situated in the Municipality of Juana Diaz

Ward:

Boundaries

Representative

North: Lot 403, P. & G. road.

South: Caribbean Sea.

East: Lots 403, 404, Jacaguas River,
 Lots 407, 408, 409, 410 and 411.

West: Quabon River and lot 414.

Originally:

Value in acre feet of the water right or concession:	760.17
	186.38
	<hr/>
	946.55

Equivalent to an area of 152.03

37.27 189.30 acres.

Transcript of Record.

Taxes

Fiscal year	Receipt No.	Tax rate per acre	Tax per year	Surcharges to March 1930	Surcharges to June 30, 1930
1922-1923	23	2.9632113	560.92	244.01	252.42
1923-1924	23	3.26388946	617.86	231.69	240.96
1924-1925	23	3.307071	626.02	197.20	206.59
1925-1926	23	2.9930349	566.58	141.65	150.18
1926-1927	23	2.9953	567.02	110.57	119.07
1927-1928	22	3.14520045030	595.38	80.38	89.31
1928-1929	22	2.86472933	542.30	40.67	48.80
1929-1930	22	2.165053484	409.84	5.12	11.27
1930-1931	22	2.37514827	449.62		
1931-1932	22	2.9589341473	560.12		
1932-1933	22	2.1253140829	402.32		
1933-1934	21	2.2317248948	422.46		

Remarks:

(Two concessions for the same estate.)

Tax \$4,485.94

Surcharges to 6/30/30 1,118.57

Total \$5,604.51

Total tax \$49,918.56

Total surcharges 12,447.23

Grand Total \$62,365.79

Permanent Irrigation District

RETURN FOR PURPOSES OF LEVYING SPECIAL IRRIGATION TAX
FIXED BY ACT 49 OF 1921.

Property No. 309.

Owner

Plan: Mercedita, Fortuna, Juana Diaz

Russell & Co., S. en C.,

Total No. of acres: 558.69.

Originally.

Name of the Estate: Serrano.

Situated in the Municipality of Juana Diaz

Ward:

Boundaries

Representative

North: Lots 308 and 312.

Russell & Co., S. en C.,

South: Caribbean Sea.

Originally.

East: Lot 308.

West: Lots 308, 310, 311, 316.

Value in acre feet of the water right or concession: 2,379.83

Equivalent to an area of 475.97 acres.

Taxes.

Fiscal year	Receipt No.	Tax rate per acre	Tax per year	Surcharges to March 1930	Surcharges to June 30, 1930
1922-1923	19	2.9632113	1,410.40	613.52	634.67
1923-1924	19	3.26388946	1,553.52	582.57	605.88
1924-1925	19	3.307071	1,574.06	495.83	519.44
1925-1926	19	2.9930349	1,424.60	356.15	377.53
1926-1927	19	2.9953	1,425.68	278.01	299.40
1927-1928	18	3.14520045030	1,497.02	202.10	224.55
1928-1929	18	2.86472933	1,363.52	102.27	122.73
1929-1930	18	2.165053484	1,030.50	12.88	28.35
1930-1931	18	2.37514827	1,130.50		
1931-1932	18	2.9589341473	1,408.36		
1932-1933	18	2.1253140829	1,011.58		
1933-1934	17	2.2317248948	1,062.22		
1934-1935	17				

Remarks:

Tax \$11,279.30

Surcharges to June 30, 1930 2,812.55

Total \$14,091.85



DEFINITE CHART SHOWING THE DISTRIBUTION OF THE WATERS OF THE JALISCO RIVER, UNDER A FOUNTAIN

Name of the Estates	Date of the Irrigation Concessions.	Total superficial area of the estates	Lands entitled to irrigation	Coefficient of liters per hectare adopted per second	Liters of water per second for the suspension of the irrigation Service.	Order Number
Fountain in the town of Juana Díaz						
Luciana	December 23, 1848	619.73	243.58	0.70	4.00	13
Cristina	March 17, 1851	784.00	308.14	0.70	82.24	5
Portuñal	May 8, 1841	794.00	312.07	0.70	106.74	4
	October 5, 1846				139.75	12
	April 23, 1846					
Totals	June 21, 1859	1,785.00	701.57	0.70	157.03	8
Amelia	October 30, 1846	1,378.77	541.91	0.70	205.80	6
Ursula	March 3, 1846					
Unión	July 28, 1855	1,773.00	696.86	0.70	120.17	9
Serrano	October 2, 1846	382.00	150.14	0.50	39.60	7
	September 26, 1845	257.60	219.15	0.50	102.47	10
	May 14, 1845			0.70	97.04	11
Boca Chica	November 7, 1860	878.84	345.41	0.50	133.28	3
San Fernando	March 7, 1867				62.79	
	April 20, 1870		75.54	0.70	52.88	1
Placeres	By prescription, 1865	612.00	240.54	0.70	22.00	2
					1166.30	

Madrid, June 8, 1860. Approved by H.M. = Sanchez Bustillo

True copy: Secretary of the General Government = Francisco Fontanals-Martinez

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CERTIFICATE.

I, Jose Morales Diaz, reporting stenographer of the District Court of San Juan, do hereby certify:

That the foregoing is a true and exact transcript of the evidence adduced by the parties herein; and also that I have delivered both to the appellant and appellee, in accordance with the law, a copy of the above transcript of the evidence.

San Juan, Puerto Rico, November 25, 1936.

J. MORALES DIAZ,

Reporting Stenographer.

(Filed with the clerk of the District Court: November 25, 1936.
P. M., Assistant Clerk.)

IN THE DISTRICT COURT FOR THE JUDICIAL DISTRICT OF
SAN JUAN, PUERTO RICO.

Civil No: 12,619.

The People of Puerto Rico, etc., Plaintiff,

v.

Russell & Co., S. en C., Defendant.

RECOVERY OF TAXES.

JUDGE'S APPROVAL OF THE TRANSCRIPT OF EVIDENCE.

I, Pablo Berga, District Judge for the Judicial District of San Juan, Puerto Rico, hereby certify:

That I presided over the hearing of this case and that the preceding transcript of evidence is a true and exact copy of the evidence adduced at the trial and that I approve the same for purposes of the appeal taken to the Supreme Court of Puerto Rico from the judgment rendered by this court.

San Juan, Puerto Rico, December 10, 1936.

PABLO BERGA,

District Judge.

IN THE SUPREME COURT OF PUERTO RICO.

7406

The People of Puerto Rico, Plaintiff and Appellant,

v.

Russell & Co., S. en C., Defendant and Appellee.

Appeal from the District Court of San Juan, P. R.

OPINION OF THE COURT

DELIVERED BY MR. JUSTICE WOLF.

San Juan, Puerto Rico, March 15, 1940.

In 1926 Russell & Co. filed a petition for an injunction to restrain the Treasurer of P. R. from collecting certain taxes. On March 4, 1927, Congress enacted that:

"Sec. 48. That the Supreme and District Courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the District Courts of the United States, and the District Courts may grant writs of mandamus in all proper cases.

"That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico." 44 Stats. 1418, 1421.

By a subsequent Act it further enacted that any tax which had been uncollected on account of injunction proceedings might be collected not by the summary administrative proceeding but a lawsuit. The Treasurer filed a complaint against Russell & Co. on June 24, 1930, to collect the tax, in the District Court of San Juan. The defendant moved for a change of venue and the cause was removed to the District Court of the United States on the ground of diverse citizenship. The case was tried therein and judgment was given for the defendant. The People of Puerto Rico, appealed to the Circuit Court of Appeals for the First Circuit which affirmed the Federal District Court. *People v. Have-*

meyer et al., 60 F. (2d) 10. The People went to the Supreme Court of the United States on certiorari and the Court reversed the Circuit Court of Appeals and the Federal District Court on the ground that there was no diversity of citizenship. *People of P. R. v. Russell & Co.*, 288 U.S. 476, 77 L. Ed. 903.

The case was remanded to the Territorial District Court. After the trial that court decided the case along the same lines that had been laid down by the Circuit Court of Appeals when it affirmed the Federal District Court. The People appealed in December 1935 but it was not until February 8, 1937, that the transcript of the record was filed. The parties filed their briefs on August 3, 1937, and May 2, 1938. A hearing was held on May 4, 1938, and a second hearing on November 22, 1939.

The facts of the case are as follows:

Russell & Co. is the owner in fee simple or the lessee of six large sugar cane plantations on the south side of the Island. To each of these plantations or estates certain water rights attach by virtue of concession from the Crown of Spain, the previous sovereign. These concessions consist of the right to take from the Jacaguas river certain quantities of water for irrigation purposes.

On September 18, 1908, the Legislature passed an Act to be found in Laws of 1909, page 152, creating an irrigation district on the south side of the Island, and that act established a complete system of irrigation to serve that district. By that act the landowners within the district would pay a certain tax on each acre of land. There was also a provision to acquire the water rights by condemnation, purchase, or exchange for credits against the tax, from the landowners as held such properties. By Act No. 128 of August 8, 1913, Special Session Laws, page 54, the Commissioner of the Interior was empowered among other things to contract with the owners of water rights who had not ceded, sold or otherwise transferred them to the irrigation district. On August 26, 1914, Russell & Co. and the owners of the estates which they hold in lease, executed contracts with the Commissioner of the Interior, whereby the concessions or water rights were suspended

and they agreed to receive from the irrigation system a certain quantity of water in exchange. On July 8, 1921, the Legislature passed Act No. 49, by which any land within the irrigation district which had not been subject to the tax was also made to respond. It is this tax that the plaintiff is trying to collect.

It should also be said that Russell & Co. is bound by its leases to pay all the taxes imposed upon the land which it holds by said leases, and if the tax is held constitutional it has to pay the tax upon every one of the six plantations.

The reasoning of the Circuit Court should be given careful attention but under the circumstances is not binding.

The defendant maintained that Act No. 49 of 1921 was void and unconstitutional and also that the action had prescribed. The lower court found the Act unconstitutional; following the Circuit Court of Appeals, *supra*; did not pass upon the question of prescription, but said by way of dictum:

However, we may say that if Act No. 49 of the Legislative Assembly of Puerto Rico, dated July 8, 1921, were valid and constitutional, the aforesaid Act No. 302 would only be applicable to the taxes whose collection had been stopped by an injunction pending on March 4, 1927, when the Act amending section 48 of the Organic Act was approved, but not to those imposed thereafter, and the amended complaint in this case includes the collection of taxes from the year 1922-1923 to 1933-34, both inclusive."

The appellant assigns three errors, as follows:

"The District Court of San Juan erred in declaring null and void Act No. 49 dated July 8, 1921, following the grounds of the judgment rendered by the Circuit Court of Appeals for the First Circuit of the United States (*People of Puerto Rico v. Havemeyer*, 60 F. (2d) p. 10) to wit:

"A. Because said Act delegates legislative powers to the Commissioner of the Interior in the part that refers to the

imposition of the special tax which the Act provides upon the lands which receive the benefits of the irrigation system.

"B. Because it impairs the value of the obligations arisen from the contracts executed on August 26, 1914, between the People of Puerto Rico and the defendant or its predecessors in title.

"2. The District Court of San Juan erred in deciding that the imposition of the assessment or special tax is not justified while the contracts established in deed No. 20 dated June 8, 1916, executed before the Notary Frank Antonsanti, are in force, and the water rights granted by the Crown of Spain to the defendant or its predecessors in title are not renounced, abandoned, relinquished or condemned.

"3. The District Court of San Juan erred in not ordering the defendant to pay the amount of the special tax which the complaint seeks to collect."

The three errors will now be considered.

As to the undue delegation of powers, we think that there is none. The Commissioner of the Interior fixes the water charges each year by performing a definite calculation. Even if the statute did not so specifically determine the computation of the charges we would not hold it an undue delegation of powers.

"The Courts have upheld the validity of statutes authorizing irrigation districts and other districts organized for the same purpose, to levy taxes and assessments, and such statutes do not fall within constitutional provisions regulating assessment and collection of taxes for general state purposes." 67 C. J. 1337, par. 925.

The text is supported by *Fallbrook Irr. Dist. v. Bradley*, 17 Sup. Ct. 56, 164 U.S. 112, 41 L. Ed. 369; *Turlock Irr. Dist. v. Williams*, 79 Cal. 360, 18 P. 379.

Title 43 of the Code of Laws of the United States is entitled "Public Lands". Chapter 12 of that title bears the name "Reclamation and Irrigation of Lands by Federal Government" and

is known as the "Reclamation Law". It contains provisions like the following:

"Sec. 373. The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this chapter into full force and effect.

"Sec. 374. Whenever in the opinion of the Secretary of the Interior any lands . . . are not needed . . . said Secretary of the Interior may cause said lands . . . to be appraised . . . and . . . to sell the same . . .

" . . . the Secretary of the Interior is authorized . . . to convey all the right title and interest of the United States of, in, and to said lands . . . subject however to such reservations, limitations or conditions as said Secretary may deem proper . . ."

The Secretary is given absolute power to determine whether the owners of land within an irrigation district may retain their land or must dispose of it.

Section 418 says:

"Before any contract is let or work begun for the construction of any reclamation project adopted after August 13, 1914, the Secretary of the Interior shall require the owners of private lands thereunder to agree to dispose of all lands in excess of the area which he shall deem sufficient for the support of a family upon the land in question, upon such terms and at not to exceed such price as the Secretary of the Interior may designate; and if any landowner shall refuse to agree to the requirements fixed by the Secretary of the Interior, his land shall not be included within the project if adopted for construction."

Absolute power is also given to the Secretary to determine "the charges which shall be made per acre . . . upon lands in private ownership which may be irrigated by the waters of the said irri-

gation project, and the number of annual installments in which such charges shall be paid and the time when such payments shall commence." Sec. 419.

Section 462 also provides for the payment of maintenance charges.

In a great number of cases the reclamation Act has been brought before the courts and its provisions have been upheld. In no case has it been attacked because it unduly delegates legislative powers to the Secretary of the Interior; but the acts of the Secretary have been repeatedly affirmed as within the scope of his powers.

In *Swigart v. Baker*, 229 U.S. 187, it was held that the Secretary of the Interior of the United States was authorized to assess cost of maintenance as well as of construction by the Reclamation Act of 1902 (32 Stat. 388, 1093) even though the act only says that the Secretary may assess "the cost of construction of the project". The court said:

"... The phrase is not expressly defined and being general in its terms is not necessarily limited to building, but may include the preservation and maintenance of what has been built."

The cases decided by the Supreme Court of Puerto Rico on the question of delegation of powers have been very few. *People v. Neagle*, 21 P.R.R. 339; *People v. Ramirez*, 42 P.R.R. 77; *Feliciano v. Lopez*, 44 P.R.R. 911; *People v. White Star Bus Line, Inc.*, 45 P.R.R. 153; *M. Taboada and Co. v. Rivera Martinez, Commissioner of Labor*, 51 P.R.R. —, and *Sifre v. Pellon*, 54 P.R.R. 559. Of these, only the first has any bearing.

The *Neagle* case involved the constitutionality of a statute (Act of August 12, 1913, Laws of Special Session of 1913, p. 90, Act No. 134) which gave authority to the Treasurer of Puerto Rico to classify the different businesses into classes.

We copy from the opinion:

"The respondent admits that legislatures may adopt pri-

mary standards and leave to administrative officials the duty of filling in details so as to make the law operative. He submits, however, that the Legislature of Puerto Rico has not set a primary standard within the meaning of the decisions which the Government in its brief relies on. We shall give a resume of these decisions."

After a study of the authorities the court said:

"We cannot see that it makes any difference that the Treasurer is given a wide discretion provided that his powers are administrative rather than legislative. The question always remains, under the words of the statute and the legislative history of the country, whether the powers conferred have been recognized as administrative rather than legislative. A specific case has been found in *Ould & Carrington, supra*. The respondent does not attempt to distinguish the case, but he attacks the reasoning. The reasoning may not be entirely satisfactory but the judgment remains a fact, and a court of the United States has decided that similar powers to those conferred by Act No. 134 upon the Treasurer of Porto Rico are administrative rather than legislative."

In the case at bar we find that the courts of other jurisdictions have held valid statutes of the same nature as the one in issue. The ample powers of the Secretary of the Interior of the United States have been broadened by judicial interpretation (*Swigart v. Baker, supra*).

In the opinion rendered in the *Neagle* case, *supra*, several cases are cited and the case of *Chicago and Northwestern Railway Co. v. Day*, 35 Fed. 874, is copied in part. All these cases tend to support the contention that in this case, as in that of *Neagle*, the delegation was of administrative rather than of legislative powers.

As we shall see later from the act itself, what the Commissioner does is to fill in details. We copy from the opinion of the Circuit Court of Appeals:

"In determining the amount to be raised, the Treasurer of Porto Rico is directed to take the amount estimated by the Commissioner of the Interior to defray the cost of operation and maintenance of the irrigation system for the following fiscal year (the estimate of the commissioner to be made and certified as provided in section 11 of Act No. 128 of August 8, 1913), and add to this estimated amount or subtract therefrom, as the case may be, any resulting deficit below or surplus above the amount expended for operation and maintenance of the system the preceding year. The treasurer is then to divide the amount so determined by the total number of acres (arrived at as prescribed in the act) to get the tax rate per acre to be levied during the subsequent fiscal year on lands outside the district which are not subject to a tax to meet the cost of the system.

"The provision complained of in section 2 of Act No. 49 as delegating legislative power is the one requiring the treasurer in ascertaining the rate for assessing the tax to take the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation and maintenance of the irrigation system during the following fiscal year. The contention is that the Legislature could levy and authorize the assessment of the tax in either one of two ways. It could itself fix a flat rate at which the receivers of water could be taxed per acre foot, or it could itself determine the amount of money to be raised for the ensuing year to defray the expenses of maintenance and operation, but that it could not delegate the determination of that amount, and thereby the rate, to the discretion of the Commissioner of the Interior; that the determination of the amount to be raised or the rate is a legislative matter involving discretion, which the legislature cannot delegate to administrative officers.

"Counsel for the plaintiff, however, contend that the determination of the *amount to be raised* for an ensuing year is

a pure matter of computation, and that the act has pointed out how that computation shall be made." *People v. Havemeyer, supra.*

If the estimate is too high or too low, a surplus or a deficit will result. A surplus will be credited to the budget of the following year, thereby reducing the tax; a deficit will be added to the budget of the following year. Thus, any error committed by the commissioner will be automatically corrected when the next budget is prepared. It will be seen that the Commissioner's discretion does not play an important part in the computation of the tax. Indeed, the commissioner's role could be eliminated and the cost of maintenance estimated some other way. For example, the budget of a previous year to be taken as tentative for the following one. Such a procedure is followed in estimating the premium rates for the State Insurance Fund.

The landowner pays the tax in the computation of which the commissioner's report is used. But since any difference between that estimate and the real cost of maintenance is adjusted the landowner is really paying for the exact cost of maintenance.

Furthermore, it has not been charged, or even suggested that the commissioner's estimates are unjust, or confiscatory.

We hold, therefore, that the act contains no undue delegation of powers.

As to the other contention, that the contracts are impaired, we also think it is without merit.

The contracts do not say that the People of Puerto Rico bind themselves not to impose taxes. Indeed, even if a clause like that had been included, we apprehend it would have been void.

Another point that the appellant makes is that the appellee failed to prove its concessions in the lower court. While it is true, as the appellee says that the appellant accepted and admitted that said concessions existed, nothing has been brought before this or any of the other courts which have passed on this case to show that a tax exemption was attached to them. As far as the records

goes, these concessions are ordinary water concessions, like a number of others granted to landowners in this Island and Spain. The only provision of which we know in regard to taxes was a section in the primitive Law of Waters by which the Crown bound itself not to raise the taxes on the lands benefited by the concession during a ten-year period.

The appellee's case might be strengthened if the tax imposed—charges for the maintenance of the system—were considered as a payment for the water received by the landowners from the irrigation system. It could then be said that the appellee does not have to buy water and therefore it should not pay for any. But the theory is different. We copy from Corpus Juris:

"While it has been broadly stated that the benefit to the land is not the source of the power to tax it for irrigation purposes, generally speaking, the justification and authority for the levying of assessments or taxes in the nature of assessments by an irrigation or similar district is derived from the benefits which the expenditure of the tax or assessment confers on the owners of land within the district, and a tax or assessment without supporting benefit, or out of all proportion to the benefits conferred, as where the assessment is based on an acreage in excess of that owned, can not be sustained although the fact that there is no benefit sufficient to support the whole assessment will not relieve the landowner from the duty to pay such portion of the assessment as is supported by a benefit." 67 C. J. 1341, par. 932.

The text is supported by *In Re Madera Irr. Dist.*, 92 Cal. 296, 28 P. 272, 275, 14 L.R.A. 755; *American Falls Reservoir Co. v. Thrall*, 39 Ida. 105, 228 P. 236; *Cosman v. Chestnut Valley Irr. Dist.*, 74 Mont. 111, 238 P. 879, 40 A.L.R. 1344.

"Broadly speaking, the word 'benefit' as used in a statutory provision requiring assessments to be proportionate to benefits received, will be construed as meaning such benefits as promote the prosperity of the district and add to property

values. Generally speaking, the theory of assessment for benefits is that the landowner has received by reason of the irrigation system an increase in the market value of his property and that increase marks the extent of the benefit, although there is authority holding that the market value of lands within an irrigation district is not conclusive on the question of benefits equaling assessments, and that there may be an actual benefit without proof of a corresponding increase in market value." 67 C. J. 1347, par. 945.

The text is supported by *Colburn v. Wilson*, 24 Ida. 94, 132 P. 579; *Union Trust Co. v. Carnhope Irr. Dist.*, 132 Wash. 538; 232 P. 341; *In re Goshen Irr. Dist.*, 42 Wyo. 229, 293 P. 373.

That the assessments need not be equivalent to the water used by the landowner has been repeatedly held.

... the owner of irrigable land within a district must respond to the annual assessment for the operation and maintenance of the system, where the water is made available for his use, even though he does not use it." *Otis Orchards Co. v. Otis Orchards Irr. Dist.*, No. 1, 124 Wash. 210, 215 P. 24, 25.

In *Nampa & Meridian Irr. Dist. v. Petrie*, 28 Ida. 227, 153 P. 425, 429, the Supreme Court of Idaho held valid a provision granting water rights to landowners for only 160 acres while subjecting their entire acreage to district assessments according to benefits. This case was followed in *Saylor v. Gray*, 41 Ariz. 558, 20 P. (2d) 441.

Similarly:

"A landowner is not entitled to exclusion of his land from an irrigation district for the sole reason that such land has an individual water right. Such tract of land would be benefited from the ability of the irrigation district to furnish water in times of emergency, to supply better or cheaper service, and to furnish electric energy or domestic water."

Bleakly v. Priest Rapids Irr. Dist., 168 Wash. 267, 11 P. (2d) 597.

Of all the cases studied, the one which most resembles the one at bar is *Knowles v. New Sweden Irrigation District*, 16 Idaho 217, 101 Pac. 81. The facts there are as follows: A man named Scott purchased, for \$1,800 a water right from the Great Western Canal Company (a private concern) whereby he received 250 inches of water per second for which he paid a certain rental every year. Subsequently the New Sweden Irrigation District was organized under the provisions of an act of the state legislature. The Irrigation District purchased the Great Western Canal Construction Company. Scott sold his land to Knowles. The Board of Directors of the Irrigation District levied an assessment on all lands included in the district and among them Knowles, to pay interest and reduce the principal on certain bonds which had been issued in payment of the Great Western Canal Company. Knowles paid under protest and brought action to recover and to enjoin the district from levying any more assessments on his land. The Supreme Court of Idaho said:

"Now it is clear to us that for the purchase of this system respondent could not legally and lawfully assess appellant's property until such time as it had either purchased or acquired his water right and privileges and reduced him to a common level and placed him on a common footing with other landowners and water consumers in the district."

The court found for the plaintiff. On rehearing, however, the court reversed itself, and said:

"Under our irrigation law as it existed at the time of the organization of this District and the assessments referred to were made, if the land of the plaintiff was properly included in said irrigation district, it was subject to assessment for benefits, provided it received any, whether the owner of said land owned a water right in connection therewith or not, for a person in an irrigation district may receive certain

benefits, regardless of whether the owner has a water right in connection therewith or not."

And later on it says:

"In *Fallbrook Irr. Dist. v. Bradley*, 164 U.S. 112, 17 Sup. Ct. 56, 41 L. Ed. 369, the Supreme Court of the United States had under consideration some of the questions involved in this case, and it was there held that land, which can be used beneficially to a certain extent without irrigation, may be so improved by it that such land can properly be included in an irrigation district and assessed for the benefit of the artificial irrigation as a public improvement, and that under the Wright irrigation law of California, the board is required to hear the petition for the organization of the district upon a notice and must not include land which will not be benefited; that it necessarily follows that a person interested has a right to appear before the board and contest the facts upon which the petition is based and, as to the benefits to any particular tract of land included in the proposed district. In referring to the power of the Legislature to constitute taxing districts, the court said: 'It has been held in this court that the Legislature has power to fix such a district for itself without any hearing as to the benefits, for the purpose of assessing upon the lands within the district the cost of a local public improvement. The Legislature, when it fixes the district itself, is supposed to have made proper inquiry and to have finally and conclusively determined the fact of benefits to the land included in the district, and the citizen has no constitutional right to any other or further hearing upon that question.'"

And later the court said:

"In *Pioneer Irrigation District v. Bradley*, 8 Idaho 310, 68 Pac. 295, 101 Am. St. Rep. 201, this court held the irrigation district act now under consideration constitutional. This case in no manner involves the taking of private prop-

erty without due process of law, nor the violation of the obligation of a contract. The only question involved under the issues is the validity of certain assessments made against the lands of the plaintiff."

In that case the Idaho court held that the benefit received by a landowner who possessed a water right was enough to make him liable to assessments in the same degree as other landowners.

In Puerto Rico the legislature apparently, by its enactments, considers the benefits of landowners who have no water rights, or who had them but relinquished them, are greater than the benefits received by landowners who are in the appellee's position.

Consequently the former have to pay construction charges, as well as maintenance. The statute provides:

"Section 11. The amount that shall be assessed and levied upon a given tract of land included in the permanent irrigation district shall be determined as follows:

"The Treasurer of Porto Rico shall calculate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, and shall add thereto the total amount due upon credits for the ensuing year on account of water rights or concessions; and shall further add thereto the amount estimated and certified as estimated to him by the Commissioner of the Interior for the cost of operation and maintenance of the irrigation system, for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the estimated amount of any deficit or surplus, as the case may be, existing in connection with the Irrigation Fund from the operations of the current fiscal year. From this amount he shall subtract the amount estimated and certified as estimated to him by the Commissioner of the Interior as the receipts for the ensuing fiscal year from any water power developed in connection with the irrigation system (until such time as the total bonded indebtedness incurred on ac-

count of the irrigation system shall have been paid in full); and the amount estimated and certified as estimated to him by the Commissioner of the Interior as receipts for the ensuing fiscal year from any other sources except from the issues of bonds and from special assessments herein provided for to be levied upon the land in the permanent irrigation district. To the amount so determined the Treasurer shall add an amount equivalent to two per centum of the total as a margin of safety for delayed collections, and the amount thus determined by the Treasurer of Porto Rico, subject to the limitations and provisions hereinafter set forth, shall be and constitute the total sum assessed for the said fiscal year, and the same shall be levied upon the lands at the time included in the permanent irrigation district (including any lands owned by The People of Porto Rico which form part of the said district, which lands shall be liable for and pay taxes levied hereunder in the same manner as the other lands included in the said irrigation district); . . ." (Act No. 128 of 1913 (2), p. 67.)

The lands of the appellee are included in subdivision 4 of section 2 of the Act (Act No. 49 of 1921, Session Laws, p. 367). It reads:

"Section 2. That the tax to be levied on each tract of land receiving water from the irrigation system, but which under the law in force does not contribute towards defraying the cost of such system, shall be classified as follows: The Treasurer of Porto Rico shall have charge of fixing the total number of acres receiving water from the irrigation system which includes . . . (4) parcels of land irrigated by water supplied because of acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or under decisions of the Irrigation Commission, is taken and measured in the rivers at the points of

intake indicated in the said concessions; and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or as shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts in cases of appeal, by five. The Treasurer of Porto Rico shall then take amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operations and maintenance of the irrigation system during the following fiscal year (as provided under section 11 of Act 128, approved August 8, 1913, which amends the Irrigation Law approved September 18, 1908), and shall add thereto or subtract therefrom, as the case may be, any resulting deficit between or surplus over, the amount expended and certified to as expended by the Commissioner of the Interior for expenses of operation and maintenance of the irrigation system during the preceding fiscal year, and the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation and maintenance of the irrigation system during the aforesaid preceding fiscal year. The Treasurer shall then divide the amount so determined by the total number of acres computed as hereinbefore provided, and the result shall be and shall constitute the tax per acre which shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system. . . ."

Finally, to support the constitutionality of the Act we may cite from the opinion of the Supreme Court of the United States in *Fallbrook Irr. Dist. v. Bradley*, 164 U.S. 112, 176:

" . . . Assume that the only theory of these assessments for local improvements upon which they can stand is that they are imposed on account of the benefits received, and

that no land ought in justice to be assessed for a greater sum than the benefits received by it, yet it is plain that the fact of the amount of benefits is not susceptible of that accurate determination which appertains to a demonstration in geometry. Some means of arriving at this amount must be used, and the same method may be more or less accurate in different cases involving different facts. Some choice is to be made, and where the fact of some benefit accruing to all the lands has been legally found, can it be that the adoption of an *ad valorem* method of assessing the lands is to be held a violation of the Federal Constitution? It seems to us clearly not. It is one of those matters of detail in arriving at the proper and fair amount and proportion of the tax that is to be levied on the land with regard to the benefits it has received, which is open to the discretion of the state legislature, and with which this court ought to have nothing to do. The way of arriving at the amount may be in some instances inequitable and unequal, but that is far from rising to the level of a constitutional problem and far from a case of taking property without due process of law."

At page 174:

"In the act under consideration, however, the establishment of its boundaries and the purposes for which the district is created, if it be finally organized by reason of the approving vote of the people, will almost necessarily be followed by and result in an assessment upon all the lands included within the boundaries of the district. The legislature thus in substance provides for the creation not alone of a public corporation, but of a taxing district whose boundaries are fixed, not by the legislature, but after a hearing, by the board of supervisors, subject to the final approval by the people in an election called for that purpose. It has been held in this Court that the legislature has power to fix such a district for itself without any hearing as to benefits.

for the purpose of assessing upon the lands within the district the cost of a local, public improvement. The legislature, when it fixes the district itself, is supposed to have made proper inquiry, and to have finally and conclusively determined the fact of benefits to the land included in the district, and the citizen has no constitutional right to any other or further hearing upon that question. The right which he thereafter has is to a hearing upon the question of what is termed the apportionment of the tax, *i.e.*, the amount of the tax which he is to pay. *Paulsen v. Portland*, 149 U.S. 30, 41. But when as in this case the determination of the question of what lands shall be included in the district is only to be decided after a decision as to what lands described in the petition will be benefited, and the decision of that question is submitted to some tribunal (the board of supervisors in this case), the parties whose lands are thus included in the petition are entitled to a hearing upon the question of benefits, and to have the lands excluded if the judgment of the board be against their being benefited. Unless the legislature decide the question of benefits itself, the landowner has the right to be heard upon that question before his property can be taken. This, in substance, was determined by the decisions of this court in *Spencer v. Merchant*, 125 U.S. 345, 356, and *Walston v. Nevin*, 128 U.S. 578. Such a hearing upon notice is duly provided for in the act."

At page 177:

"In the case of *Davidson v. New Orleans*, *supra*, the assessment, with which this court refused to interfere, was for a local improvement (reclaiming swamp lands), and by sec. 8 of the act of the Legislature of Louisiana, passed in 1858, Laws of Louisiana, 1858, 114, such an uniform assessment was levied upon the superficial or square foot of lands situate within the draining section or district of such board

as would pay for the cost of construction. The effect of this provision was that each foot of land in the whole district paid the same sum as any other foot, although the assessment was founded upon the theory of an assessment for benefits. It was complained that the amount assessed upon plaintiff's lands was excessive, and that part of them received no benefit at all, and it was to that argument that the reply was made that it was a matter of detail so far as this court was concerned, *i.e.*, it was not a constitutional question, and therefore was not reviewable here. 96 U.S. at page 106.

"In *Walston v. Nevin*, 128 U.S. 578, an assessment was laid upon lands for benefits received from construction of a local improvement, according to the number of square feet owned by the landowner. It was urged that it was not an assessment governed by the amount of benefits received, but was an absolutely arbitrary and illegal method of assessment. This court held the objection not well founded and that the matter was for the decision of the legislature, to which body the discretion was committed of providing for payment of the improvement.

"We refer to the case of *Cleveland v. Tripp*, 13 R.I. 59, decided in 1880, as one which treats this subject with much ability. The act provided for the construction of a sewer in the city of Providence and directed the laying of an assessment upon the abutting land of a certain sum for each front foot and another sum for each square foot extending back 150 feet. The claim was made that such a mode of assessment did not apply the tax in proportion to the benefits received, and was unequal and unfair, and therefore unconstitutional. The court, while admitting the complaints of inequality to be well founded, yet held the act to be within the power of the legislature.

"There are some States where assessments under such circumstances as here exist and made upon an *ad valorem* basis

have been held invalid, as an infringement of some provision of the state constitution, or in violation of the act under which they were levied. Counsel have cited several such in the briefs herein filed. We do not discover, and our attention has not been called to any case in this court where such an assessment has been held to violate any provision of the Federal Constitution. If it do not, this court can grant no relief.

The method of assessment here provided for may not be the best which would have been adopted in order to accomplish the most equal and exact justice which the nature of the case permits. But none the less we are unable to say that it runs counter to any provision of the Federal Constitution, and we must for that reason hold the objection here considered to be untenable.

An objection is also urged that it is delegating to others a legislative right, that of the incorporating of public corporations, inasmuch as the act vests in the supervisors and the people the right to say whether such a corporation shall be created, and it is said that the legislature cannot so delegate its power, and that any act performed by such a corporation by means of which the property of the citizen is taken from him, either by the right of eminent domain or by assessment, results in taking such property without due process of law.

We do not think there is any validity to the argument. The legislature delegates no power. It enacts conditions upon the performance of which the corporation shall be regarded as organized with the powers mentioned and described in the act.

After careful scrutiny of the objections to this act we are compelled to the conclusion that no one of such objections is well taken. The judgment appealed from herein is therefore reversed and the cause remanded to the Circuit Court of the United States for the Southern District of California for further proceedings not inconsistent with this opinion."

The plea of prescription raised by the defendant should be carefully considered. The district court did not pass upon it except as has been noted.

The Treasurer tried to collect the tax. Russell & Co. filed a petition for a writ of injunction before the United States District Court of Puerto Rico. The case had been appealed to the Circuit Court of Appeals when Congress on March 4, 1927, amended section 48 of the Organic Act, and forbade the issuance of writs to enjoin collection of taxes. The proceeding pending in the Circuit Court of Appeals was dismissed—*Gallardo v. Havemeyer*, 21 F. (2d) 1012—on November 3, 1927.

On April 23, 1928, Congress passed Act No. 302, which provided that all taxes which had been subject to injunction proceedings should be collected "by a suit at law instead of by attachment, embargo, distraint, or any other form of summary administrative proceeding. Notwithstanding the provisions of any existing statute of limitations any such suit may be instituted at any time not later than one year after the approval of this act."

This last sentence does not mean, as the appellee contends, that the suits had to be filed before April 23, 1929. The effect of the statute was to grant an extra term of one year to the Treasurer to collect by a suit taxes which under the ordinary statutes had prescribed by reason of the injunction proceeding.

The Act which establishes the special tax has no provision similar to the Income Tax Act, and others, providing that the Treasurer has to collect within a certain time. If Congress had not granted that year of grace to the Treasurer he might have been unable to collect some other taxes, but not this one.

We hold, therefore, that the action had not prescribed.

The judgment of the District Court of San Juan should be reversed and in lieu thereof a new one entered, ordering Russell & Co. to pay to the plaintiff the sums specified in the complaint.

ADOLPH G. WOEF,

Associate Justice.

[The same title.]

JUDGMENT.

San Juan, Puerto Rico, March 15, 1940.

For the reasons stated in the foregoing opinion the judgment appealed from rendered by the District Court of San Juan in the above-entitled case, on November 25, 1935, is hereby reversed, and in lieu thereof, this court renders another judgment ordering, as it hereby orders, that Russell & Co., S. en C., pay to the plaintiff the sum of \$61,617.04, with interest from and after June 24, 1930, on which date the original complaint was filed, plus the sum of \$36,051.84, with interest from June 8, 1934, date on which the amended complaint was filed; without special pronouncement of costs and attorneys' fees.

It was so decreed and ordered by the court as witness the signature of the Chief Justice. Mr. Justice De Jesus took no part in the decision of this case inasmuch as he, as district judge, decided a demurrer sustaining the sufficiency of the complaint.

EMILIO DEL TORO,

*Chief Justice.*Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[MEMORANDUM. Petition for appeal filed April 22, 1940; order allowing appeal, dated May 7, 1940; and citation, dated May 8, 1940, are here omitted. A. I. CHARRON, *Clerk.*]

[The same title.]

ASSIGNMENT OF ERRORS.

Now comes Russell & Company, S. en C., and files the following assignment of errors, upon which it will rely in the prosecution of the appeal herewith petitioned for in this cause from the judgment of the Supreme Court of Puerto Rico entered March 15, 1940, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of Puerto Rico in the above-entitled case, there is manifest error, to wit:

1. The court erred in holding that Act No. 49 of the Legislature of Puerto Rico approved July 8, 1921, and the enforcement thereof by plaintiff did not impair obligations of the contracts entered into on August 26, 1914, between The People of Puerto Rico and the predecessors in right or title of defendant.

2. The court erred in holding that Act. No. 49 of the Legislature of Puerto Rico approved July 8, 1921, and the provisions for ascertaining and fixing the amount of the tax therein contained did not illegally delegate legislative powers to the Commissioner of the Interior of Puerto Rico.

3. The court erred in holding that the tax herein sought to be enforced had not prescribed under the provisions of the Act of Congress of April 23, 1928 (Public No. 302, 70th Congress).

4. The court erred in failing and refusing to hold that Act No. 49 of the Legislature of Puerto Rico approved July 8, 1921, and the enforcement of the same against defendant violates Section 2 of the Organic Act of Puerto Rico in that paragraph which provides that the rule of taxation in Puerto Rico shall be uniform (48 U.S.C.A. 737; 39 Stat. 951).

5. The court erred in failing and refusing to hold that the provisions of Act No. 49 of the Legislature of Puerto Rico approved July 8, 1921, is void as impairing the obligations of the two contracts entered into on August 26, 1914, between The People of Puerto Rico on the one hand and Fortuna estates in one contract and Jose A. Poventud, Isabela Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella in the second contract (Exhibits A and B to the answer).

6. The court erred in holding or implying that defendant received special benefits by reason of the construction and operation of the irrigation system, which may form a basis for the tax imposed by Act No. 49 of 1921.

7. The court erred in failing and refusing to hold that the operation of Act. No. 49 of the Legislature of Puerto Rico approved July 8, 1921, deprives defendant of its property and property rights without due process of law.

8. The court erred in failing and refusing to hold that Act No. 49 of the Legislature of Puerto Rico approved July 8, 1921, violates the Treaty of Paris between the United States and the Kingdom of Spain of April 11, 1899, Articles VIII and IX, in that said Act impairs and destroys property rights of the defendant granted to defendant's predecessors in right and title by the Government of Spain and which were valid, subsistent rights at the time the Treaty of Paris was ratified by the United States.

9. The court erred in failing and refusing to hold that Act No. 49 of the Legislature of Puerto Rico approved July 8, 1921, violated the provisions of Section 2 of the Organic Act of Puerto Rico guaranteeing the equal protection of the laws in that it attempts to impose a tax on a limited class without any corresponding benefits.

10. The court erred in holding that a special tax or assessment as provided in Act No. 49 of the Legislature of Puerto Rico approved July 8, 1921, can be imposed upon a limited class of lands not included in the irrigation district.

11. The court erred in failing and refusing to hold that Act No. 49 of the Legislature of Puerto Rico approved July 8, 1921, is void and of no effect in its taxing provisions for the reason that the person taxed or assessed is given no right nor opportunity of a hearing upon the question of the apportionment of the burden, before the tax or assessment becomes fixed.

12. The court erred in holding valid the tax on defendant's lands under Act No. 49 of the Legislature of Puerto Rico approved July 8, 1921, while the contracts of August 26, 1914, between The People of Puerto Rico and defendant's predecessors in title and right were in force and while the water rights granted to defendant's predecessors by the Crown of Spain had never been renounced, abandoned, relinquished or expropriated.

13. The court erred in holding that the Government of Puerto Rico was not bound under the contracts of August 26, 1914, between The People of Puerto Rico and defendant's predecessors in title and right not to impose irrigation taxes upon lands to

which there were appurtenant water rights or concessions and for which water rights and concessions the Commissioner of the Interior of Puerto Rico was authorized to negotiate contracts under Section 13 of Act No. 128 approved August 8, 1913, by which the owners of such water rights and concessions would receive the reasonable equivalent in value for the suspension of their rights.

14. The court erred in refusing to give consideration to the decision of the Circuit Court of Appeals of the United States for the First Circuit in the case of *People of Puerto Rico v. Havemayer*, 60 Fed. (2d) 10.

15. The court erred in rendering judgment for the plaintiff and against the defendant, for other errors apparent in the record.

Wherefore, defendant prays that the judgment herein rendered by the Supreme Court of Puerto Rico be reversed with costs.

San Juan, Puerto Rico, April 22, 1940.

R. CASTRO FERNANDEZ,

Attorney for Defendant-Appellee.

STIPULATION *re* SUPERSEDEAS AND COST BONDS.

[Filed in the Supreme Court May 13, 1940.]

Whereas on March 15, 1940, the Supreme Court of Puerto Rico entered judgment in the above-entitled case ordering the defendant, Russell & Co., S. en C., to pay to the plaintiff, The People of Puerto Rico, the sum of sixty-one thousand, six hundred seventeen dollars, four cents (\$61,617.04) with interest from June 24, 1930, plus the sum of thirty-six thousand, fifty-one dollars, eighty-four cents (\$36,051.84) with interest from June 8, 1934;

Whereas on April 22, 1940, the defendant, Russell & Co., S. en C., filed before said court a petition for appeal from said judgment to the United States Circuit Court of Appeals for the First Circuit, and on May 7, 1940, the Supreme Court of Puerto Rico entered the following order:

"Considering the foregoing petition, it is ordered by the Chief Justice of the Supreme Court of Puerto Rico that an appeal be allowed to Russell & Company, S. en C., defendant and appellee in the above-entitled case, from the judgment rendered by this court on March 15, 1940; that the said appeal be granted to the United States Circuit Court of Appeals for the First Circuit; that the defendant and appellee be required to give a supersedeas bond of \$140,000 and a cost bond of \$300; and that a transcript of the record and proceedings herein, including copy of the petition for appeal, of this order granting the appeal and of the appeal bond, be filed in the United States Circuit Court of Appeals for the First Circuit, for which the defendant is allowed sixty days."

Whereas, the defendant herein offered the plaintiff in this action to deposit in escrow with the National City Bank of New York, San Juan Branch, the sum of one hundred forty thousand three hundred dollars (\$140,300) subject to the final outcome of this case, and such deposit is considered by the plaintiff herein as a good and sufficient security to comply with the supersedeas and cost bonds required by the Supreme Court of Puerto Rico in this case;

Whereas, said amount has been deposited by defendant in escrow with the said National City Bank of New York, San Juan Branch, as appears from the escrow agreement, a duplicate of which is hereto attached, marked "Exhibit A".

Now, therefore, the plaintiff and defendant in this case stipulate and agree that the amount so deposited be considered as a good and sufficient supersedeas and cost bond as required by the Supreme Court of Puerto Rico in the above-transcribed order of May 7, 1940, and both parties respectfully pray that the attached

escrow agreement be approved by this Honorable court as a good and sufficient supersedeas and cost bond in this case.

San Juan, Puerto Rico, May 13, 1940.

R. CASTRO FERNANDEZ,

Attorney for Defendant.

GEORGE A. MALCOLM, *Attorney General,*

by C. H. JULIA,

Assistant Attorney General,

Attorney for Plaintiff.

— ESCROW AGREEMENT.

[Filed in the Supreme Court May 13, 1940.]

This agreement made in the City of San Juan, Island of Puerto Rico on the 13th day of May, 1940

between

Russell & Co. Sucrs., a civil agricultural partnership duly organized and existing in accordance with the laws of this Island, with principal office in the City of Ponce, P. R., hereinafter called the party of the first part, and

The National City Bank of New York, San Juan Branch, a national banking association organized in accordance with the law of Congress of the United States, with principal office in the City and State of New York

Witnesseth,

Whereas on March 15, 1940 the Supreme Court of Puerto Rico in the case No. 7466 entitled, The People of Puerto Rico, plaintiff, vs. Russell & Co., S. en C., defendant, entered judgment ordering the defendant Russell & Co. S. en C., to pay to the plaintiff, The People of Puerto Rico, the sum of Sixty One Thousand Six Hundred Seventeen Dollars, Four Cents (\$61,617.04) with interest from June 24, 1930 plus the sum of Thirty-Six Thousand Fifty-One Dollars, Eighty-Four Cents (\$36,051.84) with interest from June 8, 1934, without costs;

Whereas on April 22, 1940 the defendant Russell & Co., S. en

C. filed before said Court a petition for appeal from said judgment to the United States Circuit Court of Appeals for the First Circuit, and on May 7, 1940 said Supreme Court entered an order allowing the appeal and requiring the said defendant to give a supersedeas bond of One Hundred Forty Thousand Dollars (\$140,000) and a cost bond of Three Hundred Dollars (\$300);

Whereas the party of the first part has agreed with the Attorney General of Puerto Rico, as attorney for the People of Puerto Rico, to deposit in escrow with the party of the second part, the sum of One Hundred Forty Thousand Three Hundred Dollars (\$140,300) subject to the final outcome of said suit, said deposit to be considered as a good and sufficient supersedeas and cost bond in said case;

Now, Therefore, in consideration of the premises, it is mutually agreed by the parties herein as follows:

1. Russell & Co., Sucrs., party of the first part, deposits with The National City Bank of New York, San Juan Branch, party of the second part, the sum of One Hundred Forty Thousand Three Hundred Dollars (\$140,300) in escrow to be held in trust by the party of the second part until final judgment is entered in the above mentioned case.

2. The National City Bank of New York, San Juan, Branch, party of the second part, hereby acknowledges receipt from the party of the first part, of the said sum of One Hundred Forty Thousand Three Hundred Dollars (\$140,300) which sum is placed in escrow with the said Bank to be paid out only upon receipt and in accordance with certified copy of final judgment which will be entered in the aforementioned case No. 7466, entitled, The People of Puerto Rico vs. Russell & Co., S. EN C.

3. The party of the second part is to receive from the party of the first part, for and in consideration of its services as escrow agent in this matter, a fee which has already been fixed by mutual agreement.

In Witness Whereof, the parties hereto have caused these pres-

ents to be signed and executed by their respective officers thereunto duly authorized, the day and year hereinabove stated.

RUSSELL & CO. SUCRS.,

by H. L. Cochran, *Partner*.

THE NATIONAL CITY BANK OF NEW YORK,

San Juan Branch,

by Edson L. Booth, *Manager*,

and by D. P. Campbell,

Assistant Manager.

Affidavit No. 722.

Subscribed to before me by Mr. Herman L. Cochran, of full age, married and resident of this city, partner of Russell & Co. Sucrs., and by Mr. Edson L. Booth, and by Mr. Donald P. Campbell, both of full age, married and residents of this city, manager and assistant manager respectively of The National City Bank of New York, San Juan Branch, all of them to me personally known.

San Juan, P. R., May 13, 1940.

R. RODRIGUEZ LEBRON,

Notary Public.

[The same title.]

ORDER.

San Juan, Puerto Rico, May 15, 1940.

The foregoing stipulation *re* supersedeas and cost bonds signed by counsel for the defendant and for plaintiff having been duly examined is hereby approved.

It was so decreed as witness the signature of the Chief Justice.

EMILIO DEL TORO,

Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter*.

[The same title.]

**MOTION REQUESTING TRANSMISSION OF ORIGINAL
EXHIBITS TO THE CIRCUIT COURT OF BOSTON.**

[Filed in the Supreme Court July 2, 1940.]

Now comes the defendant herein and alleges:

1. That on April 22 of this year it appealed from the judgment rendered against the defendant by this court on March 14, 1940, to the United States Circuit Court of Appeals for the First Circuit.

2. That for purposes of perfecting the transcript of record it is necessary that this court enter a resolution ordering that the following original exhibits be forwarded to the Circuit Court, as they cannot be copied:

Plaintiff's Exhibit 1 — Plan entitled "Puerto Rico Irrigation Service".

Plaintiff's Exhibit 2 — Two maps entitled "Toño Negro Hydro-Electric Project".

Plaintiff's Exhibit 3 — Four maps entitled "Utilizacion de las Fuentes Fluviales."

Exhibit B-1 — Five blueprints.

For the above stated reasons it is hereby requested that this court enter an order commanding the clerk of this court to send to the United States Circuit Court of Appeals for the First Circuit the above original exhibits.

San Juan, Puerto Rico, July 2, 1940.

R. CASTRO FERNANDEZ,

Attorney for the Defendant-Appellant.

Copy served this second day of July, 1940.

GEORGE A. MALCOLM, Attorney General,

by C. H. JULIA,

Attorneys for the Plaintiff.

[The same title.]

ORDER.

San Juan, Puerto Rico, July 3, 1940.

The foregoing motion regarding original exhibits to be sent to the United States Circuit Court of Appeals is hereby sustained.

It was so ordered by the court as witness the signature of the Chief Justice.

EMILIO DEL TORO,

Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

TRANSLATOR'S CERTIFICATE.

I, B. Marrero Rios, official interpreter and translator of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this office.

In testimony whereof, I have signed this certificate in the City of San Juan, Puerto Rico, this thirty-first day of July, 1940.

B. MARRERO RIOS,

*Official Interpreter and Translator
of the Supreme Court of Puerto Rico.*

[Title omitted.]

CLERK'S CERTIFICATE.

I, Joaquin Lopez, Secretary-Reporter of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above-entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant, according to the order of the court.

That the attached plan, maps and blueprints are Plaintiff's Exhibits 1, 2 and 3, and Exhibit B-1, transmitted to the Supreme Court of Puerto Rico with the record of this case on appeal, by the clerk of the District Court of San Juan.

I further certify that the translation of said papers and proceedings has been revised by the official translator of this court; as shown by his certificate attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the City of San Juan, Puerto Rico, this first day of August, 1940.

JOAQUIN LOPEZ,

Secretary-Reporter, Supreme Court of Puerto Rico.

[\$92.50 internal revenue stamps cancelled.]

[MEMORANDUM. Orders of enlargement of time for docketing case to, and including, September 5, 1940, are here omitted.
A. I. CHARRON, Clerk.]

[fol. 180] Proceedings in Circuit Court of Appeals

On January 7, 1941, this cause came on to be heard, and was fully heard by the court, Honorable Calvert Magruder, and Honorable John C. Mahoney, Circuit Judges, and Honorable John P. Hartigan, District Judge, sitting.

Thereafter, to wit, on March 10, 1941, the following opinion of the Court was filed:

[fol. 181] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIRST CIRCUIT

October Term, 1940

No. 3617

RUSSELL & Co., S. EN C., Defendant, Appellant,

vs.

THE PEOPLE OF PUERTO RICO, Plaintiff, Appellee

Appeal from the Supreme Court of Puerto Rico
Before Magruder, Mahoney and Hartigan, JJ.

OPINION OF THE COURT—March 10, 1941

MAHONEY, J.:

This is an appeal from a judgment of the Supreme Court of Puerto Rico reversing a judgment of the District Court of San Juan and ordering the defendant, Russell & Co., a sociedad en commandita organized under the laws of Puerto Rico, to pay to the plaintiff, The People of Puerto Rico, the sum of \$61,617.04 with interest from and after June 24, 1930, on which date the original complaint was filed, plus the sum of \$36,051.84, with interest from June 28, 1934, the date on which the amended complaint was filed, without costs and attorneys' fees. The case was tried on a stipulation of facts, some oral testimony and exhibits.

Russell & Co. is the owner and lessee of certain estates which lie along or abut upon the Jacaguas River, and is the owner by virtue of certain concessions and royal decrees [fol. 182] of the Spanish Crown or by uses and prescriptions of the right to take water from the Jacaguas River for irrigating these estates in an amount equivalent to an

aggregate of 12,612.1 acre feet per year. The said water was taken from the river bed through intakes constructed for that purpose by the predecessors in title of the defendant. The term defendant hereinafter used in this opinion shall include the defendant's predecessors in title. These concessions and water rights were in full force and effect from the earliest time down to their suspension by contract in 1914.

By a law approved September 18, 1908, called the Public Irrigation Law (Laws of Puerto Rico, 1909, p. 152) provision was made for the construction of a public irrigation system on the south coast of Puerto Rico. As part of the construction of this system, the plaintiff erected a dam, known as the Guayabal Dam, for the impounding and storing of a part of the water of the Jacaguas River. This dam extended across the bed of the Jacaguas River above the intakes which the defendant used for taking water for the irrigation of its lands.

It is clear that the construction of the irrigation system would impair or interfere with the rights of the owners of water concessions on the Jacaguas River unless special provisions were made to acquire these rights or provide for their equivalent. Therefore, the irrigation law provided that the plaintiff might acquire existing water rights on the Jacaguas River by condemnation, in which case the fair value thereof would be paid in cash to the owners. Provision also was made for the relinquishment of concessions by contracts between the plaintiff and the owners of water rights appurtenant to land within the irrigation district, in which case the value of the rights would not be paid in cash to the owners but would be credited upon their proportionate part of future assessments for the construction and operation of the dam. The defendant's water rights were not condemned; nor did it relinquish them by contract, as provided in the irrigation law, since its lands were not within the irrigation district.

In 1913 the Public Irrigation Law was amended (Laws of [fol. 183] Puerto Rico, 1913, p. 54). Section 13 of the amendment provided that "in the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Puerto Rico, such land shall be entitled to receive from the irrigation system

an amount of water which is the reasonable equivalent in value of the said water right or concession." The Commissioner of the Interior was authorized to enter into agreements with the owners of water concessions whose lands had not been included in the irrigation district for the purpose of fixing the amount of water, and the time, place and conditions of delivery thereof, which the owners were to receive as such equivalent of their water rights in consideration of the suspension of such rights.

Pursuant to this section the Commissioner of the Interior entered into contracts with the defendant which provided for the suspension of the water rights of the defendant for the period of the contract and guaranteed the delivery of a specified equivalent amount of water to be delivered by the plaintiff at the intakes of the defendant. The contract stated the claims of the defendant to the water concessions and recited the construction of the irrigation system which might interrupt and impair these rights. It asserted that the water rights had not been relinquished or surrendered and that the defendant was unwilling to enter into an agreement for such surrender. The contract further stated that the amount of water taken by the defendant under its water rights varied from month to month in accordance with the rainfall so that it was impossible to determine in advance the amount of water to which the defendant was entitled for any fixed period of time. It declared the readiness of the plaintiff to deliver from the Jacaguas River the amount of water to which the defendant was entitled under its concession; but, in order to make more certain the operation of the irrigation system, it was declared to be the desire of the plaintiff to agree upon a regular amount of water which, under all the circumstances, would be considered the [fol. 184] fair equivalent in value for irrigation purposes of the amount of water which the defendant would ordinarily take and use under its water rights. The parties then agreed as to the amounts of water which should be considered the fair equivalent in value of the water which the defendant had been taking under its concessions, and the plaintiff agreed to deliver such water at the various intakes provided by the defendant for the reception of the same. The contract also made provisions for the taking of torrential water by the defendant, but this does not become material in this suit. It was provided that in the case of underground filtration or seepage from behind the dam, the defendant

might make use of the water in the river because of such seepage without payment or responsibility to the plaintiff. Provision also was made that if the defendant desired delivery of the water to be made at places other than those agreed upon the plaintiff would make such delivery, but "all extra expense occasioned by such delivery shall be borne by the [defendant], its successors or assigns." The fifth clause of the contract provided that the defendant should exercise its old concessions during ten days in each year in order to prevent their being destroyed by non-use.

The Public Irrigation Law also provided that all lands in the irrigation district should be annually assessed a uniform amount per acre, in order to defray the costs of construction, maintenance and operation of the system. Those persons whose water rights had been condemned and paid for in cash were taxed in the same manner as those land owners whose land was included in the irrigation district but who had never had any water rights or concessions. As provided by law, those owners of water rights appurtenant to lands within the irrigation district who had relinquished such rights by contract with the plaintiff had a certain part of the value of those rights credited each year against the tax assessed against them. No provision was made for taxing those owners of water rights whose lands were not included in the irrigation district and who had not relinquished their rights to the plaintiff, but who had contracts with the plaintiff providing for the delivery [fol 185] of an equivalent amount of water in consideration of the suspension of their water rights.

In 1921 the Legislature passed Act 49 (Laws of Puerto Rico, 1921, p. 366) entitled "An Act Fixing a Tax on Certain Lands using Water from the Southern Coast Public Irrigation System, on which lands no Tax Whatsoever was Levied Under the Public Irrigation Law, and for Other Purposes." The first section levied a special tax on all parcels of land which are supplied with water for irrigation purposes from the irrigation system constructed pursuant to the Public Irrigation Law but which under the present law in no way contribute to the payment of expenses for the maintenance of the system. The second section set out the manner in which the taxes should be computed. The Treasurer was directed to find the total number of acres receiving water from the irrigation system including, in sub-section 4, land irrigated by water supplied by the plaintiff as the

equivalent of the water formerly taken under the water rights suspended pursuant to the contracts between the plaintiff and the owners of such rights.¹ The Treasurer of [fol. 186] Puerto Rico was then to take the amount estimated by the Commissioner of the Interior as necessary to defray the cost of operation and maintenance of the irrigation system for the following year and was to add thereto or subtract therefrom any deficit or surplus which was certified by the Commissioner of the Interior as remaining after the payment of expenses for operating and maintaining the system during the preceding year. The amount so determined was to be divided by the total number of acres and the result was to constitute the tax per acre which was to normal rate for delivery per acre for the formation of the irrigation district; (4) parcels of land irrigated by water supplied because of acquired rights or concessions which be levied during the next year on all lands supplied with water from the irrigation system which "in no other manner are subject to the payment of a tax to meet the cost of the irrigation system".

¹"Section 2. . . . The Treasurer of Porto Rico shall have charge of fixing the total number of acres receiving water from the irrigation system which includes: (1) tracts of lands subject to taxation pursuant to the provisions of the public irrigation law and amendments thereto, for the purpose of reimbursing the cost of the irrigation works; (2) tracts of land to which the Irrigation Commission acknowledged the right to the use of water or to which such right was acknowledged by the courts in cases of appeal, as rights acquired under the law for the use of water under prior concessions; (3) tracts of land irrigated with water delivered in accordance with acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or because of decisions of the Irrigation Commission, is delivered in whole or in part and is measured at the canals of the Irrigation Service system, and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or shall have been fixed by the Commissioner of the Interior by the Irrigation Commission or by decision of the courts, by four,—that is to say, by the number of acre-feet per year established by the Public Irrigation Law as a have not been assigned, which said water, pursuant to the

In 1924 the defendant brought suit in the District Court of the United States for Puerto Rico to enjoin the territorial government from attempting to collect any tax under Act 49. The government was so enjoined, but while an appeal was pending Congress passed a statute forbidding the maintenance of a suit to restrain the assessment or collection of any tax imposed by the laws of Puerto Rico. This court then remanded the case to the District Court with directions to dismiss the suit for want of jurisdiction. *Gallardo v. Havemeyer*, 21 F. (2d) 1012 (C. C. A. 1st, 1927).

On April 23, 1928, Congress passed an Act for the relief of taxpayers whose pending suits had been dismissed because of the Act above mentioned. This statute provided that in cases pending on March 4, 1927, where the taxpayer had obtained an injunction restraining the assessment or collection of a tax, the enforcement of any such tax by the [fol. 187] authorities at Puerto Rico should be by a suit at law rather than any form of summary proceeding. As a result of the passage of this Act, the plaintiff instituted this action to collect taxes under Act 49.

The suit was originally brought in the insular District Court of San Juan. It was removed to the United States District Court for Puerto Rico on the ground of diversity of citizenship. The court denied a motion to remand and entered a decree for the defendant on the grounds that the assessments sued for were levied in violation of Section 2 of the Organic Act of Puerto Rico (39 Stat. 951, 48 U. S. C. A. § 737) forbidding the enactment of any law impairing the obligation of contract, and that Act 49 was void as an

terms of the contracts entered into with the Commissioner of the Interior or under decisions of the Irrigation Commission, is taken and measured in the rivers at the points of intake indicated in the said concessions; and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or as shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts in cases of appeal, by five."

Whether this complicated and confusing method of computation even approximately arrived at the fair apportionment of the actual operation costs of the system to be borne by those persons heretofore untaxed is a question that it is unnecessary to decide in this action.

undue delegation to administrative officers of the legislative function of levying taxes.

On appeal this court affirmed the decision of the District Court in *People of Porto Rico v. Havemeyer*, 60 F. (2d) 10 (C. C. A. 1st, 1932). The Supreme Court granted certiorari, reversed the judgment of this court on the ground that the federal court had acted without jurisdiction as the defendant was a juridical entity under Puerto Rican law, domiciled in Puerto Rico, and its domicile rather than that of its members determines citizenship for purposes of federal jurisdiction. It remanded the cause to the insular District Court from which it had been removed. The case having been remanded, the plaintiff thereupon filed an amended complaint on June 8, 1934, to claim additional taxes accrued since the filing of the suit. At the conclusion of the evidence the insular District Court followed the opinion in *People of Porto Rico v. Havemeyer*, supra, and dismissed the complaint, though it recognized that the decision could have no substantive effect, having been reversed on jurisdictional grounds.

The Supreme Court of Puerto Rico reversed the decision of the insular District Court and rendered judgment ordering the defendant to pay the tax sued for with interest. The Supreme Court felt that the reasoning of this court in *People of Porto Rico v. Havemeyer*, supra, was not binding upon it and reached an opposite result. It is from that [fol. 188] judgment that the defendant has appealed, thus bringing the case before this court for the second time.

We have been unable to find any similar case where a United States Circuit Court of Appeals passed on the merits of a case appealed from a federal district court, was reversed by the Supreme Court of the United States on jurisdictional grounds and the case remanded to the courts of another government, and later was called upon to decide the same question again between the same parties on substantially the same record on appeal from an entirely different judicial system. This peculiar situation arises because this court is made the court of appeal in certain circumstances for both the United States District Court for Puerto Rico and the territorial Supreme Court of Puerto Rico (38 Stat. 803, 28 U. S. C. A. § 225). We have undoubted jurisdiction of this appeal since the defendant contends that the taxing law in question, Act 49, violates a statute of the United States, i. e., the Organic Act of Puerto Rico.

The defendant, Russell & Co., argues that the opinion of this court on the former appeal, though reversed for lack of jurisdiction, is controlling on this court as to all matters therein decided on which the Supreme Court of the United States did not express an opinion. The argument is that the doctrines of *res judicata*, *stare decisis*, or the "law of the case" must bar any independent examination of the question presented. We can not agree. In our recent decision of *White v. Higgins*, 116 F. (2d) 312 (C. C. A. 1st, 1940), we expressed our agreement with the general doctrine that on a second appeal in the same case all questions adjudicated on the prior appeal are the law of the case and will not be reconsidered or readjudicated. *Thompson v. Maxwell Land Grant Co.*, 168 U. S. 451, 456 (1897); *Great Western Telegraph Co. v. Burnham*, 162 U. S. 339, 343-344 (1896). We have in no sense changed our position. But the present case is not one in which any of the questions were finally adjudicated. The Supreme Court of the United States decided that this court had no jurisdiction to pass upon the [fol. 189] questions raised and nullified our earlier decision. In such a situation purported decisions made without power or authority to make them cannot be considered as the law of the same case on a subsequent appeal through the proper jurisdictional channels. See *Steinman v. Clinchfield Coal Corp.*, 121 Va. 611, 622-623, 93 S. E. 684, 688 (1917); *Elsom v. Tefft*, 148 Wash. 195, 196, 268 Pac. 177 (1928); cf. *In re Baird's Estate*, 193 Cal. 225, 236, 223 Pac. 974, 978 (1924).

Clearly, the Supreme Court of Puerto Rico was not bound by our former decision rendered without jurisdiction any more than would be a state Supreme Court. If it were so concluded from an independent adjudication of the merits of the controversy and if we should likewise be prevented from re-examining the questions presented, the reversal, remand and retrial of the suit would have been useless indeed, particularly since in the normal course of events the case was almost certain to be appealed again to this court. It is our opinion that if the court on the first appeal did not have jurisdiction to adjudicate the question, its judgment is not the law of the case on a subsequent appeal. Nor can the first appeal be *res judicata* or *stare decisis*, since nothing was finally adjudicated. The most that can be said for it is that it may or may not be considered persuasive reasoning for independently reaching the same result. The citation of the opinion, following its reversal, in *Rich Hill*

Coal Co. et al. v. Bashore, 334 Pa. 449, 498, 7 A. (2d) 302, 325 (1939), is simply indicative of such persuasion. The insular District Court, the Supreme Court of Puerto Rico were, and this court also is, perfectly free to pass upon the questions here presented regardless of our former decision in *People of Porto Rico v. Havemeyer*, supra.

The Supreme Court of Puerto Rico held that Act 49 did not impair the obligation of contracts on the ground that this Act merely imposed a valid tax on the owners of water rights. We do not agree. It seems clear to us that the Act impairs the obligation of contract by charging the defendant a part of the cost of maintaining and operating the irrigation system of which it was not a part and for the delivery of water to which it was entitled by contract in lieu of water which it had heretofore taken without charge.

The validity of these contracts between the plaintiff and the defendant has long since been upheld in this court. See *Veitia v. Fortuna Estates*, 240 Fed. 256 (C. C. A. 1st, 1917); *People of Porto Rico v. Russell & Co.*, 268 Fed. 723 (C. C. A. 1st, 1920). By these cases, the plaintiff was restrained from diverting from the defendant the surplus waters which it had agreed by the contracts could be taken by the defendant until the plaintiff should undertake the utilization of such surplus waters. It was immediately following the last case enjoining the plaintiff from this diversion that Act 49 was passed attempting to exact money for the support of the system from those owners of water rights who had not surrendered them but had contractual rights to the delivery of equivalent amounts of water by the irrigation system.

Prior to these contracts, the defendant had the right to take certain amounts of water from the Jacaguás River at its intakes without charge. It constructed and maintained its own intakes. This right to take water was a property right of the defendant. The plaintiff could not impair or obstruct this right without paying just compensation. The Public Irrigation Law recognized this by providing for such condemnation and compensation or for the crediting of the value of surrendered water rights against the assessments for construction and operation of the irrigation system levied on those owners of water rights who had surrendered them and were included in the irrigation district. The defendant had not surrendered its water rights and was not included in the irrigation district.

Since the defendant did not wish to relinquish its water rights, and apparently the plaintiff did not wish to condemn and pay for them, they entered into a contract to provide the defendant with the equivalent of its water rights. A lesser amount than what the defendant could take under its water rights was provided for because of the certainty of its delivery. The plaintiff insists that the defendant must [fol. 191] pay for the benefits received by it because of the irrigation system. However, by contract the defendant got no more than the equivalent of its former rights. Ostensibly it got no benefit and suffered no harm; what it gained in certainty it lost in quantity.

Under its water rights, the defendant got its water free at its intakes. Under the contract, the plaintiff agreed to deliver an amount of water equivalent in value at the defendant's intakes in consideration of the right acquired by it to carry out the irrigation scheme and interfere with the defendant's rights. There is nothing in the contract providing that the defendant pay either for the equivalent in value of water which it had heretofore received free or for delivery of such water. The opposite is implicit in the entire contract. The defendant continued to maintain its own intakes and reservoirs. Only when the defendant requests delivery at other than the contract intakes is there any provision for payment of any costs, and then the defendant is only to pay the "extra" cost of such delivery. It is also significant that the contract expressly provided that the defendant was to have free use of any waters which seeped through from the dam over and above the specific amount contracted for.

The plaintiff frankly admits that the tax in question is "very clearly simply a special tax to cover only appellant's fair share of the actual current maintenance costs of the irrigation works". That is the entire difficulty. The appellant has no "fair share" of the maintenance cost of the irrigation works to bear. It was entitled to free water before the passage of the Acts in question. The so-called tax clearly imposes a burden upon the defendant's present right to receive the water agreed to be delivered to it by the plaintiff as a substitute for its old free water rights. We agree with the former opinion of this court in *People of Porto Rico v. Havemeyer*, supra, that this Act undertakes to make the contractual right to receive the water agreed upon conditional on the payment of the taxes in question, and impairs

[fol. 192] the contractual obligation to furnish the water with no conditions in consideration of the right to build the irrigation system.

The plaintiff had an opportunity to condemn the rights and pay their full value. If after such condemnation, the land was furnished water from the system the defendant would be in the position of one who had never possessed water rights and would be subject to assessments for construction, maintenance and operation. So also if the defendant had relinquished its rights in consideration of inclusion in the district and a credit of the value of the surrendered rights against such assessments. The plaintiff made no such arrangements for payment of value. In effect, it suspended the defendant's rights without compensation and now desires to force it to pay the cost of providing it with water as though it held no rights, in spite of the contractual obligation to provide their equivalent. In such a situation the words of the Supreme Court of the United States in *Woodruff v. Trapnall*, 10 How. 190, 207 (U. S. 1850) seem particularly applicable:

"A State can no more impair, by legislation, the obligation of its own contracts, than it can impair the obligation of the contracts of individuals. We naturally look to the action of a sovereign State, to be characterized by a more scrupulous regard to justice, and a higher morality, than belong to the ordinary transactions of individuals."

See also *Antoni v. Greenhow*, 107 U. S. 769, 795 (1882); *Hall v. Wisconsin*, 103 U. S. 5 (1880); *Green v. Biddell*, 8 Wheat. 1, 92 U. S. (1832).

The plaintiff insists, however, that the tax is valid since there is no showing that the water rights or the contractual equivalent thereof were to be permanently tax free. We need not here decide whether a general property tax or other tax might validly be imposed on the defendant's right to take water from the Jacaguas River for irrigation purposes. Suffice it to say that this is not such a tax. This is a special assessment to cover the actual current maintenance costs of the irrigation works. It is based upon a benefit which is not conferred and is in violation of a contract [fo. 193] to provide an equivalent of free water. It is well settled that under the guise of levying taxes, a state may not impair the obligation of contracts. *Murray v. Charleston*, 96 U. S. 432 (1877).

The case of *Metropolitan Street Ry. v. New York*, 199 U. S. 1 (1905), dwelt on at length by the plaintiff is not in point. In that case the question was whether, on top of a special annual assessment provided for by contract, the State could impose a general franchise tax. In the instant case, the problem is whether the government can impose a special assessment not provided for by contract, even assuming that a general tax could be imposed. The questions are quite different.

It is our opinion that Act 49 impairs the obligation of these contracts entered into for the suspension of water rights in return for the agreement to deliver an equivalent amount of water to the defendant. In view of this determination we find it unnecessary to pass upon the question of whether there was an undue delegation of legislative power to the Commissioner of the Interior in the computation of the tax.

The judgment of the Supreme Court of Puerto Rico is reversed, and the case is remanded to that court with direction to order the complaint dismissed; the appellant recovers costs of appeal.

On the same date, to wit, March 10, 1941, the following Judgment was entered:

JUDGMENT—March 10, 1941

This cause came on to be heard January 7, 1941, upon the transcript of record of the Supreme Court of Puerto Rico and was argued by counsel.

Upon consideration whereof, It is now, to wit, March 10, 1941, here ordered, adjudged and decreed as follows: The judgment of the Supreme Court of Puerto Rico is reversed, [fol. 194] and the case is remanded to that court with direction to order the complaint dismissed; the appellant recovers costs of appeal.

By the Court.

Arthur I. Charron, Clerk.

Thereafter, to wit, on April 9, 1941, mandate was stayed until further order of court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 192] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8426)